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ALPHABET INC., GOOGLE LLC, AND LOON LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 SPACE DATA CORPORATION,

19 Plaintiff,

20 v.

21 ALPHABET INC., GOOGLE LLC, AND
22 LOON LLC,

23 Defendants.

Case No. 5:16-cv-03260-BLF

**DEFENDANTS' ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO PLAINTIFF
SPACE DATA CORPORATION'S
FOURTH AMENDED COMPLAINT**

Judge: Hon. Beth Labson Freeman

Date Filed: June 13, 2016

Trial Date: August 5, 2019

JURY TRIAL DEMANDED

1 Defendants Alphabet Inc., Google LLC, and Loon LLC (collectively “Google”), by and
2 through counsel, submit their Answer to Plaintiff Space Data Corporation’s (“Space Data”)
3 Fourth Amended Complaint (“Complaint”), as follows:

4 **I. INTRODUCTION AND SUMMARY**

5 1. Google admits that the internet has changed how people with internet access live.
6 Google is without knowledge or information sufficient to form a belief as to the truth of the
7 remaining factual allegations of this paragraph, and therefore denies them. This paragraph also
8 includes argument, speculation and conclusions to which no response is required, but to the extent
9 a response is required, Google denies the allegations.

10 2. Google admits that not everyone who lives in remote or undeveloped areas has
11 online access and that terrestrial infrastructure can be expensive. Google is without knowledge or
12 information sufficient to form a belief as to the truth of the remaining factual allegations of this
13 paragraph, and therefore denies them. This paragraph also includes argument, speculation and
14 conclusions to which no response is required, but to the extent a response is required, Google
15 denies the allegations.

16 3. Google admits that many people in the world lack internet access and/or lack
17 wireless access. Google is without knowledge or information sufficient to form a belief as to the
18 truth of the remaining factual allegations of this paragraph, and therefore denies them. This
19 paragraph also includes argument, speculation and conclusions to which no response is required,
20 but to the extent a response is required, Google denies the allegations.

21 4. Google admits that it has made expanding internet access a corporate priority. The
22 remaining allegations of this paragraph consist of argument, speculation and conclusions to which
23 no response is required. To the extent this paragraph includes any additional allegations to which
24 a response is required, Google denies them.

25 5. Google denies that the existence of a “peaceful band” of calm, structured,
26 predictable winds in the stratosphere was or is “[c]ontrary to all conventional wisdom.” Google
27 is without knowledge or information sufficient to form a belief as to the truth of the other factual
28 allegations of this paragraph, and therefore denies them. This paragraph also includes argument,

1 speculation and conclusions to which no response is required, but to the extent a response is
2 required, Google denies the allegations.

3 6. Google is without knowledge or information sufficient to form a belief as to the
4 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
5 includes argument, speculation and conclusions to which no response is required, but to the extent
6 a response is required, Google denies the allegations.

7 7. Google admits that beginning in the fall of 2007 various Google representatives
8 met with representatives of Space Data and received materials from Space Data about the
9 company. Google denies Space Data's characterization of Sergey Brin's and Larry Page's
10 involvement. Google further admits that it entered into a limited duration nondisclosure
11 agreement with Space Data. Google denies the remaining factual allegations of this paragraph.
12 This paragraph also includes argument, speculation and conclusions to which no response is
13 required, but to the extent a response is required, Google denies the allegations.

14 8. Google admits that a Google team, including Mr. Brin and Mr. Page, visited Space
15 Data's Chandler, Arizona facility on February 15, 2008. Google is without knowledge or
16 information sufficient to form a belief as to the truth of the factual allegations of this paragraph
17 concerning what balloons Space Data may have been flying during the visit or what information
18 about those balloons was on display in Space Data's NOC, and therefore denies them. Google
19 denies the remaining factual allegations of this paragraph. This paragraph also includes
20 argument, speculation and conclusions to which no response is required, but to the extent a
21 response is required, Google denies the allegations.

22 9. Google admits that its discussions with Space Data ended shortly after February
23 15, 2008. Google denies the remaining allegations of this paragraph.

24 10. This paragraph consists of argument, speculation and conclusions to which no
25 response is required. To the extent this paragraph includes any allegations to which a response is
26 required, Google denies them.

27 11. Google admits that it publicly launched Project Loon in June 2013. Google denies
28 the remaining factual allegations of this paragraph. This paragraph also includes argument,

1 speculation and conclusions to which no response is required. To the extent this paragraph
2 includes any additional allegations to which a response is required, Google denies them.

3 12. Google admits that it filed a Project Loon-related patent application in January
4 2012. Google further admits that it filed a non-publication request with the application. Google
5 denies Space Data's characterization of the application. Google denies the remaining factual
6 allegations of this paragraph. This paragraph also includes argument, speculation and
7 conclusions to which no response is required, but to the extent a response is required, Google
8 denies the allegations.

9 13. This paragraph consists of argument, speculation and conclusions to which no
10 response is required. To the extent this paragraph includes any allegations to which a response is
11 required, Google denies them.

12 14. Google admits that Project Loon balloons have flown in various locations,
13 including at times in California and elsewhere in the United States. Google denies any remaining
14 allegations of this paragraph.

15 15. Google admits that Mike Cassidy made the statement quoted in this paragraph.
16 Google denies that Space Data is using the quoted language in context or that the implication is
17 the one that Space Data intends to draw from it. Google is without knowledge or information
18 sufficient to form a belief as to the truth of the other factual allegations of this paragraph, and
19 therefore denies them. The remaining allegations of this paragraph consist of argument,
20 speculation and conclusions to which no response is required. To the extent this paragraph
21 includes any additional allegations to which a response is required, Google denies them.

22 16. Google admits that what appears to be a copy of the parties' December 1, 2007
23 Mutual Confidentiality and Non-Disclosure Agreement ("NDA") is attached as Exhibit A to the
24 Complaint. Google denies the remaining allegations of this paragraph. In particular, Google
25 denies that it has misappropriated any Space Data trade secret or breached any provision of the
26 NDA. Google further denies that it infringes or has infringed, directly or indirectly, or is liable
27 for infringement of, any valid and enforceable claim of any Space Data patent.

17. This paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

THE PARTIES

18. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

19. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

20. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

21. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

22. Google admits that Alphabet is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google admits that Alphabet was created through a corporate reorganization completed on October 2, 2015. Google further admits that Google LLC is a wholly owned subsidiary of XXVI Holdings Inc., which is a wholly owned subsidiary of Alphabet Inc. Google denies any remaining allegations of this paragraph.

23. Google admits that it is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google denies any remaining allegations of this paragraph.

24. Google admits that Loon LLC is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google admits that Loon LLC began operating the Project Loon business as a stand-alone entity on July 1, 2018. Google further admits that Loon LLC is an indirect subsidiary of Alphabet Inc. and an affiliate of Google LLC. Google denies any remaining allegations of this paragraph.

JURISDICTION AND VENUE

25. Google admits that Space Data purports to bring this action under the patent laws of the United States, 35 U.S.C. § 271 et seq. Google further admits that this Court has subject matter jurisdiction over patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

Google denies any remaining allegations of this paragraph.

26. Google admits that this Court has federal question subject matter jurisdiction over Space Data's claim for misappropriation of trade secrets under the Defend Trade Secrets Act under 18 U.S.C. § 1836(c) and 35 U.S.C. § 1331, and that the Court may exercise supplemental jurisdiction over Space Data's California state law claims for misappropriation of trade secrets and breach of contract under 28 U.S.C. § 1367. Google denies any remaining allegations of this paragraph.

27. Google admits that venue is proper in the Northern District of California and that Google's principal place of business is within this judicial district. Google denies any remaining allegations of this paragraph.

INTRADISTRICT ASSIGNMENT

28. Google admits that the parties' NDA states that "[t]he exclusive venue for any dispute shall be in the state or federal courts within Santa Clara County, California." The remaining allegations of this paragraph set forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

II. STATEMENT OF FACTS

A. Airborne Communications Platforms.¹

29. This paragraph consists of argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is

¹ Google does not understand the headings included in the Complaint to constitute allegations to which any response is required. To the extent that the headings do constitute or include allegations to which a response is required, Google denies them.

1 required, Google is without knowledge or information sufficient to form a belief as to the truth of
2 the allegations, and therefore denies them.

3 30. This paragraph consists of argument, speculation and conclusions to which no
4 response is required. To the extent this paragraph includes any allegations to which a response is
5 required, Google is without knowledge or information sufficient to form a belief as to the truth of
6 the allegations, and therefore denies them.

7 31. This paragraph consists of argument, speculation and conclusions to which no
8 response is required. To the extent this paragraph includes any allegations to which a response is
9 required, Google is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations, and therefore denies them.

11 32. This paragraph consists of argument, speculation and conclusions to which no
12 response is required. To the extent this paragraph includes any allegations to which a response is
13 required, Google is without knowledge or information sufficient to form a belief as to the truth of
14 the allegations, and therefore denies them.

15 33. This paragraph consists of argument, speculation and conclusions to which no
16 response is required. To the extent this paragraph includes any allegations to which a response is
17 required, Google is without knowledge or information sufficient to form a belief as to the truth of
18 the allegations, and therefore denies them.

19 34. This paragraph consists of argument, speculation and conclusions to which no
20 response is required. To the extent this paragraph includes any allegations to which a response is
21 required, Google is without knowledge or information sufficient to form a belief as to the truth of
22 the allegations, and therefore denies them.

23 **B. Balloons and Airships**

24 35. This paragraph consists of argument, speculation and conclusions to which no
25 response is required. To the extent this paragraph includes any allegations to which a response is
26 required, Google is without knowledge or information sufficient to form a belief as to the truth of
27 the allegations, and therefore denies them.
28

1 36. This paragraph consists of argument, speculation and conclusions to which no
2 response is required. To the extent this paragraph includes any allegations to which a response is
3 required, Google is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations, and therefore denies them.

5 37. This paragraph consists of argument, speculation and conclusions to which no
6 response is required. To the extent this paragraph includes any allegations to which a response is
7 required, Google is without knowledge or information sufficient to form a belief as to the truth of
8 the allegations, and therefore denies them.

9 **C. Space Data: a Sailing Constellation**

10 38. Google is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations of this paragraph, and therefore denies them.

12 39. Google is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations of this paragraph, and therefore denies them.

14 40. This paragraph consists of argument, speculation and conclusions to which no
15 response is required. To the extent this paragraph includes any allegations to which a response is
16 required, Google is without knowledge or information sufficient to form a belief as to the truth of
17 the allegations, and therefore denies them.

18 41. Google is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations of this paragraph, and therefore denies them.

20 42. Google is without knowledge or information sufficient to form a belief as to the
21 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
22 includes argument, speculation and conclusions to which no response is required, but to the extent
23 a response is required, Google denies the allegations.

24 43. Google is without knowledge or information sufficient to form a belief as to the
25 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
26 includes argument, speculation and conclusions to which no response is required, but to the extent
27 a response is required, Google denies the allegations.

1 44. Google is without knowledge or information sufficient to form a belief as to the
2 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
3 includes argument, speculation and conclusions to which no response is required, but to the extent
4 a response is required, Google denies the allegations.

5 45. Google is without knowledge or information sufficient to form a belief as to the
6 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
7 includes argument, speculation and conclusions to which no response is required, but to the extent
8 a response is required, Google denies the allegations.

9 46. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
11 includes argument, speculation and conclusions to which no response is required, but to the extent
12 a response is required, Google denies the allegations.

13 47. Google is without knowledge or information sufficient to form a belief as to the
14 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
15 includes argument, speculation and conclusions to which no response is required, but to the extent
16 a response is required, Google denies the allegations.

17 48. Google is without knowledge or information sufficient to form a belief as to the
18 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
19 includes argument, speculation and conclusions to which no response is required, but to the extent
20 a response is required, Google denies the allegations.

21 49. Google is without knowledge or information sufficient to form a belief as to the
22 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
23 includes argument, speculation and conclusions to which no response is required, but to the extent
24 a response is required, Google denies the allegations.

25 **D. Space Data, the Company**

26 50. Google is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations of this paragraph, and therefore denies them.

1 51. Google is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations of this paragraph, and therefore denies them.

3 52. Google is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations of this paragraph, and therefore denies them.

5 53. Google is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations of this paragraph, and therefore denies them.

7 54. Google is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations of this paragraph, and therefore denies them.

9 55. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations of this paragraph, and therefore denies them.

11 56. Google is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations of this paragraph, and therefore denies them.

13 57. Google is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations of this paragraph, and therefore denies them.

15 58. Google is without knowledge or information sufficient to form a belief as to the
16 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
17 includes argument, speculation and conclusions to which no response is required, but to the extent
18 a response is required, Google denies the allegations.

19 59. Google is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations of this paragraph, and therefore denies them.

21 60. Google is without knowledge or information sufficient to form a belief as to the
22 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
23 includes argument, speculation and conclusions to which no response is required, but to the extent
24 a response is required, Google denies the allegations.

25 61. Google is without knowledge or information sufficient to form a belief as to the
26 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
27 includes argument, speculation and conclusions to which no response is required, but to the extent
28 a response is required, Google denies the allegations.

62. Google denies that Space Data has worked zealously to maintain the secrecy of its proprietary information. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations of this paragraph, and therefore denies them. This paragraph also includes argument, speculation and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations.

63. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them

E. Google's Space Data Due Diligence

64. Google admits that it has been aware for many years that individuals would over time increasingly perform internet searches from mobile devices, such as smart phones, instead of personal computers and other non-mobile devices. Google is without knowledge or information sufficient to form a belief as to the truth of the other factual allegations of this paragraph, and therefore denies them. The remaining allegations of this paragraph set forth argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

65. Google admits that it acquired Android Inc., a developer of software for mobile devices, in 2005. The remaining allegations of this paragraph set forth argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

66. This paragraph consists of argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

67. Google admits that in 2007, the FCC announced that it would auction the 700 MHz band in early 2008. The remaining allegations of this paragraph set forth argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies them.

1 68. This paragraph consists of argument, speculation and conclusions to which no
2 response is required. To the extent this paragraph includes any allegations to which a response is
3 required, Google is without knowledge or information sufficient to form a belief as to the truth of
4 the allegations, and therefore denies them.

5 69. Google admits that it, along with many others, engaged in efforts to have the FCC
6 adopt certain open access provisions and policies for the 700 MHz band, and that the FCC
7 ultimately agreed to impose certain open access provisions and policies if a minimum bid amount
8 was exceeded. Google denies the other factual allegations of this paragraph. The remaining
9 allegations of this paragraph set forth argument, speculation and conclusions to which no
10 response is required. To the extent this paragraph includes any additional allegations to which a
11 response is required, Google denies them.

12 70. Google admits that it participated in the 700 MHz auction. Google further admits
13 that one of its goals in participating in the auction was to ensure that bids in excess of the
14 minimum that trigger the open access policies and provisions were submitted. The remaining
15 allegations of this paragraph set forth argument, speculation and conclusions to which no
16 response is required. To the extent this paragraph includes any additional allegations to which a
17 response is required, Google denies them.

18 71. Google admits that by early March 2008, it was apparent that Verizon had
19 submitted a bid larger than the minimum that would trigger the open access policies and
20 provisions, and that Verizon subsequently obtained various 700 MHz spectrum licenses. Google
21 further admits that Android-based mobile phones are presently the most popular type of mobile
22 phones in the world. Google also admits that its revenues have increased since March 2008. The
23 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
24 no response is required. To the extent this paragraph includes any additional allegations to which
25 a response is required, Google denies them.

26 72. Google admits that FCC rules imposed various coverage obligations on winning
27 bidders. Google denies the other factual allegations of this paragraph. The remaining allegations
28 of this paragraph set forth argument, speculation and conclusions to which no response is

1 required. To the extent this paragraph includes any additional allegations to which a response is
2 required, Google denies them.

3 73. Google is without knowledge or information sufficient to form a belief as to the
4 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
5 includes argument, speculation and conclusions to which no response is required, but to the extent
6 a response is required, Google denies the allegations.

7 74. Google admits that it received an email in August 2007 from a Space Data
8 consultant. Google denies Space Data's characterization of the email. Google is without
9 knowledge or information sufficient to form a belief as to the truth of the remaining factual
10 allegations of this paragraph, and therefore denies them.

11 75. Google admits that Christopher Sacca sent an email to the Space Data consultant
12 on August 10, 2007, saying "I am curious to hear more about your proposal." Google is without
13 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
14 this paragraph, and therefore denies them.

15 76. Google admits that Google representatives met with Space Data representatives at
16 Google's Mountain View, California headquarters on Tuesday, September 18, 2007. Google is
17 without knowledge or information sufficient to form a belief as to the truth of the factual
18 allegations of this paragraph concerning the length of the meeting or whether Sergey Brin and
19 Larry Page attended, and therefore denies them. Google denies the remaining allegations of this
20 paragraph.

21 77. Google admits that Space Data provided it with information about Space Data's
22 platform at the parties' meeting in September 2007. Google denies Space Data's characterization
23 of the information. The remaining allegations of this paragraph set forth argument, speculation
24 and conclusions to which no response is required. To the extent this paragraph includes any
25 additional allegations to which a response is required, Google denies them.

26 78. Google is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations of this paragraph, and therefore denies them.

28

1 79. Google admits that Minnie Ingersoll sent an email to Jerry Knoblach and Jim
2 Wiesenbergs on October 17, 2007 seeking to schedule another meeting and that Ms. Ingersoll's
3 email included the quoted language. Google denies that the quoted language included any
4 brackets, as appears in this paragraph. Google denies that Space Data is using the quoted
5 language in context or that the implication is the one that Space Data intends to draw from it.
6 Google denies the remaining allegations of this paragraph.

7 80. Google admits that in 2007 Richard Whitt worked on public policy issues for
8 Google. Google further admits that Mr. Whitt met with Mr. Knoblach and Mr. Wiesenbergs on
9 October 24, 2007. Google is without knowledge or information sufficient to form a belief as to
10 the truth of the remaining factual allegations of this paragraph, and therefore denies them.

11 81. Google admits that Ms. Ingersoll, Mr. Sacca, Larry Alder, and Phil Gossett met
12 with Mr. Knoblach, Mr. Wiesenbergs, and Eric Frische at Google's headquarters in Mountain
13 View on November 1, 2007. Google is without knowledge or information sufficient to form a
14 belief as to the truth of the factual allegations of this paragraph concerning Mr. Page's and Mr.
15 Brin's attendance, and therefore denies them. Google admits that the parties discussed Space
16 Data's technology and the potential for Space Data to work with Google. Google denies Space
17 Data's characterization of the parties' discussion. Google denies the other factual allegations of
18 this paragraph. The remaining allegations of this paragraph set forth argument, speculation and
19 conclusions to which no response is required. To the extent this paragraph includes any
20 additional allegations to which a response is required, Google denies them.

21 82. Google admits the allegations of this paragraph.

22 83. Google admits that on November 28, 2007, Ms. Ingersoll introduced Space Data to
23 Mike Pearson. Google admits that Mr. Pearson was on Google's "Corporate Development
24 Team." Google admits that Ms. Ingersoll's email to Space Data included the language quoted in
25 this paragraph. Google denies that Space Data is using the quoted language in context or that the
26 implication is the one that Space Data intends to draw from it. Google denies any remaining
27 allegations of this paragraph.

1 84. Google admits that Mr. Pearson had a call with Space Data representatives in early
2 December 2007. Google denies the call took place on December 4, 2007. Google admits that
3 Mr. Pearson emailed Space Data a draft proposed NDA on December 4, 2007, and that the parties
4 thereafter executed the NDA with an effective date of December 1, 2007. Google denies any
5 remaining allegations of this paragraph.

6 85. Google admits that Mr. Pearson asked Space Data by email on December 4, 2007
7 to provide certain information to assist Google in evaluating Space Data, including Space Data's
8 capitalization table, income statement and balance sheet. Google also admits that Mr. Pearson's
9 email included the language quoted in this paragraph. Google denies that the quoted language
10 placed emphasis on any words, as appears in this paragraph. Google denies that Space Data is
11 using the quoted language in context or that the implication is the one that Space Data intends to
12 draw from it. The remaining allegations of this paragraph set forth argument, speculation and
13 conclusions to which no response is required. To the extent this paragraph includes any
14 additional allegations to which a response is required, Google denies them.

15 86. Google admits that on December 14, 2017 Space Data provided Google with what
16 Space Data represented were its audited financials and certain financial projections, including the
17 materials attached as Exhibit D to the complaint. Google denies that the cover email for the
18 financial information explicitly stated that "all of the information, past, present and future, was
19 proprietary, confidential, and fully subject to the NDA." Google denies Space Data's
20 characterization of the information provided. The remaining allegations of this paragraph set
21 forth argument, speculation and conclusions to which no response is required. To the extent this
22 paragraph includes any additional allegations to which a response is required, Google denies
23 them.

24 87. Google admits that Mr. Sacca left Google in or about December 2007. The
25 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
26 no response is required. To the extent this paragraph includes any additional allegations to which
27 a response is required, Google denies them.

28

1 88. Google admits that Ms. Ingersoll emailed Space Data on December 20, 2007, and
2 that her email included the quoted language. Google denies that the quoted language placed
3 emphasis on any words, as appears in this paragraph. Google denies that Space Data is using the
4 quoted language in context or that the implication is the one that Space Data intends to draw from
5 it. Google is without knowledge or information sufficient to form a belief as to the truth of the
6 remaining allegations of this paragraph, and therefore denies them.

7 89. Google admits that the parties scheduled a conference call for January 3, 2008 and
8 held a conference call on that date. Google further admits that as of January 3, 2008, the number
9 of individuals within Google involved in assessing Space Data was approximately seven. Google
10 is without knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations of this paragraph, and therefore denies them.

12 90. Google admits that Space Data sent a presentation slide deck on January 2, 2008,
13 which Space Data marked as confidential. Google denies Space Data's characterization of the
14 substance of the slide deck. The remaining allegations of this paragraph set forth argument,
15 speculation and conclusions to which no response is required. To the extent this paragraph
16 includes any additional allegations to which a response is required, Google denies them.

17 91. Google admits that the parties engaged in discussions concerning valuations of
18 Space Data and Space Data's spectrum assets in late January 2007. Google further admits that
19 Space Data provided Google with what Space Data represented were its 2007 year-end, pre-audit
20 P&L on January 25, 2008 and that the P&L was marked confidential. Google denies the
21 remaining allegations of this paragraph.

22 92. Google admits that parties scheduled a visit by Google representatives to Space
23 Data's Chandler, Arizona headquarters for February 15, 2008. The remaining allegations of this
24 paragraph set forth argument, speculation and conclusions to which no response is required. To
25 the extent this paragraph includes any additional allegations to which a response is required,
26 Google denies them.

1 93. Google admits that Space Data provided a spreadsheet to Google on January 28,
2 2008. Google is without knowledge or information sufficient to form a belief as to the truth of
3 the remaining allegations of this paragraph, and therefore denies them.

4 94. Google admits the allegations of this paragraph.

5 95. Google admits that Mr. Knoblach emailed Google a spreadsheet on February 11,
6 2008 and that he stated in his cover email that the spreadsheet was confidential. Google admits
7 that Mr. Knoblach's cover email includes that language quoted in this paragraph. Google denies
8 Space Data's characterization of the spreadsheet attached Mr. Knoblach's email, including that it
9 was a "detailed analysis" as alleged in this paragraph. The remaining allegations of this
10 paragraph set forth argument, speculation and conclusions to which no response is required. To
11 the extent this paragraph includes any additional allegations to which a response is required,
12 Google denies them.

13 96. Google admits that Mr. Knoblach emailed Google a presentation slide deck on
14 February 12, 2008 and that his cover email included the language quoted in this paragraph.
15 Google denies Space Data's characterization of the slide deck. Google denies the other factual
16 allegations of this paragraph. The remaining allegations of this paragraph set forth argument,
17 speculation and conclusions to which no response is required. To the extent this paragraph
18 includes any additional allegations to which a response is required, Google denies them.

19 97. Google admits that on February 12, 2008, Daniel Conrad of Google emailed Space
20 Data with questions concerning Space Data's spectrum assets. Google denies Space Data's
21 characterization of Mr. Conrad's questions or the motivations behind them. The remaining
22 allegations of this paragraph set forth argument, speculation and conclusions to which no
23 response is required. To the extent this paragraph includes any additional allegations to which a
24 response is required, Google denies them.

25 98. Google admits that on February 15, 2008, a Google team, including Sergey Brin
26 and Larry Page, flew to Arizona, traveled from the airport to Space Data's facility by SUV, and
27 then visited Space Data's facility. Google denies that the group spent the better part of a day at
28 the facility. Google denies the remaining allegations of this paragraph.

1 99. Google admits that the individuals listed in this paragraph participated in Google's
2 February 15, 2008 visit to Space Data. Google admits that Sergey Brin and Larry Page are
3 cofounders of Google and are computer scientists by training. Google admits that Larry Alder is
4 an engineer with a degree in aeronautics and astronautics and that he joined Google in 2005.
5 Google admits that Mr. Alder worked in Google's Access group. Google admits that Minnie
6 Ingersoll worked at Google from 2002 until 2014, that she worked as a product manager from
7 2002 to 2011 and as a Principal from 2011 to 2014, and that she was involved in founding the
8 Google Access group. Google admits that Daniel Conrad was a Google engineer and served as a
9 product manager from 2006 to 2010. Google admits that Daniel McCloskey is an engineer who
10 joined Google in 2007 and who is the named inventor on more than one patent. Google denies
11 that Mr. McCloskey served as Head of Design for Google's Advanced Technologies and Projects
12 Group. Google admits that Phillip Gossett was an engineer who joined Google in 2005 and was a
13 co-inventor on patents with Mr. McCloskey. Google denies that Mr. Gossett is still employed at
14 Google. Google admits that Richard Walker worked as a Google engineer from 2007 to 2010.
15 Google admits that Sunil Daluvoy worked on new business development at Google from 2006
16 until 2013 and held the title of Principal. Google also admits that Mr. Daluvoy worked on
17 wireless spectrum-related initiatives while at Google. Google admits that Mike Pearson joined
18 Google in 2005 and has worked in various business development roles while at Google. Google
19 admits that Joseph Faber is employed as in-house counsel at Google and that he joined Google
20 prior to the 2008 spectrum auction. Google is without knowledge or information sufficient to
21 form a belief as to the truth of the remaining factual allegations of this paragraph, and therefore
22 denies them. This paragraph also includes argument, speculation and conclusions to which no
23 response is required, but to the extent a response is required, Google denies the allegations.

24 100. Google admits that its representatives arrived at Space Data in the late morning of
25 February 15, 2008. Google admits that the Google visitors first gathered in a conference room
26 and then were given a tour by Space Data representatives. Google denies Space Data's
27 characterization of the information presented during the tour. Google denies the other factual
28 allegations of this paragraph. The remainder of this paragraph consists of argument, speculation

1 and conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 101. Google admits that its representatives visited Space Data's network operations
4 control center ("NOC"). Google is without knowledge or information sufficient to form a belief
5 as to the truth of the remaining factual allegations of this paragraph, and therefore denies them.

6 102. Google admits that Space Data's NOC had two large screens on the wall. Google
7 is without knowledge or information sufficient to form a belief as to the truth of the remaining
8 factual allegations of this paragraph, and therefore denies them.

9 103. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations of this paragraph, and therefore denies them.

11 104. Google is without knowledge or information sufficient to form a belief as to the
12 truth of the allegations of this paragraph, and therefore denies them.

13 105. Google is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations of this paragraph, and therefore denies them.

15 106. Google admits that a few members of the Google team took photographs during
16 the visit to Space Data. Google admits that members of its team asked questions. Google is
17 without knowledge or information sufficient to form a belief as to the truth of the remaining
18 allegations of this paragraph, and therefore denies them.

19 107. Google admits that part of its tour of Space Data's facilities involved launching
20 two balloons from Space Data's parking lot. Google is without knowledge or information
21 sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and
22 therefore denies them.

23 108. Google admits that after the balloon launches, lunch was served. Google further
24 admits that after lunch, the tour of Space Data's facilities continued. Google denies Space Data's
25 characterization of the tour. Google is without knowledge or information sufficient to form a
26 belief as to the truth of Space Data's allegations concerning flight pattern of Space Data's
27 balloons, and therefore denies them. Google denies any remaining allegations of this paragraph.
28

1 109. Google admits that the photographs reproduced following this paragraph appear to
2 be of members of the Google team during the tour of Space Data's facilities, but with edits and
3 alterations made by Space Data. Google denies Space Data's characterization of the photographs.
4 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
5 which no response is required. To the extent this paragraph includes any additional allegations to
6 which a response is required, Google denies them.

7 110. Google denies Space Data's characterization of Google's Space Data tour. Google
8 is without knowledge or information sufficient to form a belief as to the truth of the remaining
9 allegations of this paragraph, and therefore denies them.

10 **F. Trade Secrets Disclosed to Google**

11 111. Google admits that Space Data provided it with information before and during
12 Google's February 15, 2008 visit to Space Data, including information that Space Data claimed
13 was confidential. Google admits that Space Data sent Google an email on February 19, 2008.
14 Google denies Space Data's characterization of the information provided during Google's visit.
15 Google denies the other factual allegations of this paragraph. The remainder of this paragraph
16 sets forth argument, speculation and conclusions to which no response is required. To the extent
17 this paragraph includes any additional allegations to which a response is required, Google denies
18 them.

19 112. This paragraph consists of argument, speculation and conclusions to which no
20 response is required. To the extent this paragraph includes any allegations to which a response is
21 required, Google denies them.

22 113. Google denies the factual allegations of this paragraph. This paragraph also
23 includes argument, speculation and conclusions to which no response is required, but to the extent
24 a response is required, Google denies the allegations.

25 114. Google denies that its team photographed the screenshots referenced in this
26 paragraph. Google is without knowledge or information sufficient to form a belief as to the truth
27 of the other factual allegations of this paragraph, and therefore denies them. The remainder of
28 this paragraph sets forth argument, speculation and conclusions to which no response is required.

1 To the extent this paragraph includes any additional allegations to which a response is required,
2 Google denies them.

3 115. Google is without knowledge or information sufficient to form a belief as to the
4 truth of the factual allegations of this paragraph, and therefore denies them. This paragraph also
5 includes argument, speculation and conclusions to which no response is required, but to the extent
6 a response is required, Google denies the allegations.

7 116. Google is without knowledge or information sufficient to form a belief as to the
8 truth of the factual allegations of this paragraph, and therefore denies them. The remainder of this
9 paragraph sets forth argument, speculation and conclusions to which no response is required. To
10 the extent this paragraph includes any additional allegations to which a response is required,
11 Google denies them.

12 117. Google denies that it saw and could photograph hundreds of similar screenshots
13 covering every balloon in the array for a period exceeding an hour and a half. Google denies
14 Space Data's characterization of the data displayed during Google's tour. Google is without
15 knowledge or information sufficient to form a belief as to the truth of the other factual allegations
16 of this paragraph, and therefore denies them. The remainder of this paragraph sets forth
17 argument, speculation and conclusions to which no response is required. To the extent this
18 paragraph includes any additional allegations to which a response is required, Google denies
19 them.

20 118. Google is without knowledge or information sufficient to form a belief as to the
21 truth of the factual allegations of this paragraph, and therefore denies them. The remainder of this
22 paragraph sets forth argument, speculation and conclusions to which no response is required. To
23 the extent this paragraph includes any additional allegations to which a response is required,
24 Google denies them.

25 119. Google is without knowledge or information sufficient to form a belief as to the
26 truth of the factual allegations of this paragraph concerning Space Data's assembly of its wind
27 data, and therefore denies them. Google denies the other factual allegations of this paragraph.
28 The remainder of this paragraph sets forth argument, speculation and conclusions to which no

1 response is required. To the extent this paragraph includes any additional allegations to which a
2 response is required, Google denies them.

3 120. Google denies the factual allegations of this paragraph. The remainder of this
4 paragraph sets forth argument, speculation and conclusions to which no response is required. To
5 the extent this paragraph includes any additional allegations to which a response is required,
6 Google denies them.

7 121. Google denies the allegations of this paragraph. In particular, Google denies that
8 the allegations of this paragraph describe any trade secrets.

9 122. Google admits that temperature increases with altitude in the stratosphere. Google
10 is without knowledge or information sufficient to form a belief as to the truth of the factual
11 allegations of this paragraph concerning Space Data's development of a hover algorithm, and
12 therefore denies them. Google denies the factual allegations of this paragraph concerning what
13 was conventional wisdom. Google denies the other factual allegations of this paragraph. The
14 remainder of this paragraph sets forth argument, speculation and conclusions to which no
15 response is required. To the extent this paragraph includes any additional allegations to which a
16 response is required, Google denies them.

17 123. Google denies the factual allegations of this paragraph. The remainder of this
18 paragraph sets forth argument, speculation and conclusions to which no response is required. To
19 the extent this paragraph includes any additional allegations to which a response is required,
20 Google denies them.

21 124. Google is without knowledge or information sufficient to form a belief as to the
22 truth of the factual allegations of this paragraph, and therefore denies them. The remainder of this
23 paragraph sets forth argument, speculation and conclusions to which no response is required. To
24 the extent this paragraph includes any additional allegations to which a response is required,
25 Google denies them.

26 125. Google is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations of this paragraph, and therefore denies them.

28 126. Google denies the allegations of this paragraph.

1 127. Google is without knowledge or information sufficient to form a belief as to the
2 truth of the factual allegations of this paragraph concerning what its team observed after lunch,
3 and therefore denies them. Google denies the other factual allegations of this paragraph. The
4 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
5 no response is required. To the extent this paragraph includes any additional allegations to which
6 a response is required, Google denies them.

7 128. The allegations of this paragraph set forth argument, speculation and conclusions
8 to which no response is required. To the extent this paragraph includes any allegations to which a
9 response is required, Google denies them.

10 129. Google denies the allegations of this paragraph. In particular, Google denies that
11 the allegations of this paragraph describe any trade secrets.

12 130. Google admits that at 60,000 plus feet, the air is very thin, and is ineffective at
13 conducting heat. Google denies that the ambient air temperature in the “peaceful band” is
14 approximately negative 40 degrees Fahrenheit. Google is without knowledge or information
15 sufficient to form a belief as to the truth of the factual allegations of this paragraph, and therefore
16 denies them. The remaining allegations of this paragraph set forth argument, speculation and
17 conclusions to which no response is required. To the extent this paragraph includes any
18 additional allegations to which a response is required, Google denies them.

19 131. Google is without knowledge or information sufficient to form a belief as to the
20 truth of the factual allegations of this paragraph, and therefore denies them. The remaining
21 allegations of this paragraph set forth argument, speculation and conclusions to which no
22 response is required. To the extent this paragraph includes any additional allegations to which a
23 response is required, Google denies them.

24 132. Google denies the allegations of this paragraph. In particular, Google denies that
25 the allegations of this paragraph describe any trade secrets.

26 133. Google denies the factual allegations of this paragraph. The remaining allegations
27 of this paragraph set forth argument, speculation and conclusions to which no response is
28

1 required. To the extent this paragraph includes any additional allegations to which a response is
2 required, Google denies them.

3 134. Google is without knowledge or information sufficient to form a belief as to the
4 truth of the factual allegations of this paragraph concerning what is shown on any particular
5 screen inside Space Data's NOC, and therefore denies them. Google denies the remaining
6 allegations of this paragraph.

7 135. Google is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations of this paragraph, and therefore denies them.

9 136. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations of this paragraph, and therefore denies them.

11 137. Google denies the factual allegations of this paragraph. The remaining allegations
12 of this paragraph set forth argument, speculation and conclusions to which no response is
13 required. To the extent this paragraph includes any additional allegations to which a response is
14 required, Google denies them.

15 138. Google denies the allegations of this paragraph. In particular, Google denies that
16 the allegations of this paragraph describe any trade secrets.

17 139. Google admits that the images reproduced in this paragraph are of an early
18 iteration of Google's Project Loon flight operations center. Google denies that Space Data is
19 using the images in context or that the implication is the one that Space Data intends to draw from
20 it. Google denies that the facilities depicted in the images "bears a striking similarity to Space
21 Data's NOC." The remaining allegations of this paragraph set forth argument, speculation and
22 conclusions to which no response is required. To the extent this paragraph includes any
23 additional allegations to which a response is required, Google denies them.

24 140. Google admits that Space Data provided Google with financial information and
25 that it designated some of that information confidential under the parties' NDA. Google is
26 without knowledge or information sufficient to form a belief as to the truth of the factual
27 allegations of this paragraph concerning the number of pages that information would amount to if
28 printed. The remaining allegations of this paragraph set forth argument, speculation and

1 conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 141. Google admits that Space Data provided Google with what Space Data claimed
4 was a five-year financial projection on December 14, 2007 and that Space Data designated this
5 spreadsheet confidential. Google also admits that Space Data provided Google with what Space
6 Data claimed were its audited and unaudited financial statements and its equity and shareholder
7 information. Google admits that the subject line of the cover email designated this information as
8 confidential. Google is without knowledge or information sufficient to form a belief as to the
9 truth of the factual allegations of this paragraph concerning the authenticity or accuracy of the
10 information provided by Space Data to Google. Google denies Space Data's characterization the
11 substance and significance of the information. The remaining allegations of this paragraph set
12 forth argument, speculation and conclusions to which no response is required. To the extent this
13 paragraph includes any additional allegations to which a response is required, Google denies
14 them.

15 142. Google denies the factual allegations of this paragraph. The remaining allegations
16 of this paragraph set forth argument, speculation and conclusions to which no response is
17 required. To the extent this paragraph includes any additional allegations to which a response is
18 required, Google denies them.

19 143. Google admits that Space Data provided financial information appearing to date
20 back to 2004. Google denies Space Data's characterization of the information. Google is without
21 knowledge or information sufficient to form a belief as to the truth of the factual allegations of
22 this paragraph concerning the authenticity or accuracy of the information provided by Space Data
23 to Google. Google denies the other factual allegations of this paragraph. The remaining
24 allegations of this paragraph set forth argument, speculation and conclusions to which no
25 response is required. To the extent this paragraph includes any additional allegations to which a
26 response is required, Google denies them.

27 144. Google denies the allegations of this paragraph. In particular, Google denies that
28 the allegations of this paragraph describe any trade secrets.

1 145. Google admits that the cited blog post includes the language quoted in this
2 paragraph. Google denies that Space Data is using the quoted language in context or that the
3 implication is the one that Space Data intends to draw from it. Google denies the other factual
4 allegations of this paragraph. The remaining allegations of this paragraph set forth argument,
5 speculation and conclusions to which no response is required. To the extent this paragraph
6 includes any additional allegations to which a response is required, Google denies them.

7 146. This paragraph sets forth argument, speculation and conclusions to which no
8 response is required. To the extent this paragraph includes any allegations to which a response is
9 required, Google denies them.

10 147. Google admits that Space Data emailed a presentation slide deck which it referred
11 to as “vision slides.” Google denies Space Data’s characterization of the slide deck. Google
12 denies the remaining factual allegations of this paragraph. This paragraph also includes
13 argument, speculation and conclusions to which no response is required, but to the extent a
14 response is required, Google denies the allegations.

15 148. Google admits that on January 2, 2008, Space Data emailed a presentation slide
16 deck, which included a slide entitled “Google with Space Data,” and that Space Data marked the
17 slide deck confidential. Google denies Space Data’s characterization of the slide deck. The
18 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
19 no response is required. To the extent this paragraph includes any additional allegations to which
20 a response is required, Google denies them.

21 149. Google admits that the slide deck included the two slides reproduced in this
22 paragraph. Google denies that Space Data is using the slides in context or that the implication is
23 the one that Space Data intends to draw from it. Google denies Space Data’s characterization of
24 the slide deck. Google denies the other factual allegations of this paragraph. The remaining
25 allegations of this paragraph set forth argument, speculation and conclusions to which no
26 response is required. To the extent this paragraph includes any additional allegations to which a
27 response is required, Google denies them.

28

1 150. Google admits that the slide deck alleged in this paragraph was marked
2 confidential by Space Data. Google denies Space Data's characterization of the slide deck.
3 Google denies the other factual allegations of this paragraph. The remaining allegations of this
4 paragraph set forth argument, speculation and conclusions to which no response is required. To
5 the extent this paragraph includes any additional allegations to which a response is required,
6 Google denies them.

7 151. Google denies the allegations of this paragraph. In particular, Google denies that
8 the allegations of this paragraph describe any trade secrets.

9 **G. The NDA**

10 152. Google admits that the parties entered into an NDA with an effective date of
11 December 1, 2007 and that the NDA includes the quoted language. Google denies the remaining
12 factual allegations of this paragraph. This paragraph also includes argument, speculation and
13 conclusions to which no response is required, but to the extent a response is required, Google
14 denies the allegations. In particular, Google denies Space Data's characterization of the terms of
15 the NDA.

16 153. Google admits that the parties' NDA includes the language quoted in this
17 paragraph. Google denies that the quoted language included the words in brackets, as appears in
18 this paragraph. Google denies that the implication of the quoted language is the one that Space
19 Data intends to draw from it. Google denies any remaining allegations of this paragraph.

20 154. Google admits that the NDA includes provisions concerning the designation of
21 information as confidential under the agreement. Google denies that Space Data properly
22 designated as confidential under the NDA the information it is now alleging constitutes its
23 confidential information and trade secrets. Google denies any remaining factual allegations of
24 this paragraph. This paragraph also includes argument, speculation and conclusions to which no
25 response is required, but to the extent a response is required, Google denies the allegations. In
26 particular, Google denies Space Data's characterization of the terms of the NDA.

27 155. Google admits that Space Data provided it with certain information after the
28 effective date of the NDA and that Space Data designated some of that information confidential.

1 Google admits that the NDA includes the snippet of language quoted in this paragraph. Google
 2 denies any remaining factual allegations of this paragraph. This paragraph also includes
 3 argument, speculation and conclusions to which no response is required, but to the extent a
 4 response is required, Google denies the allegations. In particular, Google denies Space Data's
 5 characterization of the terms of the NDA.

6 156. Google admits that the NDA has provisions governing when and under what
 7 circumstances and conditions the agreement would terminate or expire. Google admits that the
 8 NDA includes the snippet of language quoted in this paragraph. Google admits that neither party
 9 to the NDA has provided the other with written notice of termination of the NDA pursuant to
 10 Section 6 of the agreement. Google denies Space Data's characterization of the terms of the
 11 NDA. Google denies any remaining allegations of this paragraph.

12 157. Google denies the allegations of this paragraph.

13 158. Google denies the allegations of this paragraph.

14 159. Google admits that the NDA includes the snippet of language quoted in this
 15 paragraph. Google denies that the quoted language included the words in brackets, as appears in
 16 this paragraph. Google denies that the implication of the quoted language is the one that Space
 17 Data intends to draw from it. Google denies Space Data's characterization of the terms of the
 18 NDA. Google denies the remaining allegations of this paragraph.

19 160. Google denies the allegations of this paragraph.

20 161. Google denies the allegations of this paragraph.

21 **H. Space Data Preserved Its Trade Secrets As Per The Terms Of the Parties'**
 22 **NDA**

23 162. This paragraph sets forth argument and legal conclusions to which no response is
 24 required. To the extent this paragraph includes any allegations to which a response is required,
 25 Google denies them.

26 163. Google admits that the parties' NDA contains the snippets of language quoted in
 27 this paragraph. Google denies that Space Data is using the quoted language in context or that the
 28 implication is the one that Space Data intends to draw from it. The remaining allegations of this

1 paragraph set forth argument and legal conclusions to which no response is required. To the
2 extent this paragraph includes any additional allegations to which a response is required, Google
3 denies them. In particular, Google denies Space Data's characterization of the terms of the
4 parties' NDA

5 164. This paragraph sets forth argument and legal conclusions to which no response is
6 required. To the extent this paragraph includes any allegations to which a response is required,
7 Google denies them. In particular, Google denies Space Data's characterization of the terms of
8 the parties' NDA.

9 165. Google denies the factual allegations of this paragraph. The remaining allegations
10 of this paragraph set forth argument, speculation and conclusions to which no response is
11 required. To the extent this paragraph includes any additional allegations to which a response is
12 required, Google denies them.

13 166. Google denies the factual allegations of this paragraph. The remaining allegations
14 of this paragraph set forth argument, speculation and conclusions to which no response is
15 required. To the extent this paragraph includes any additional allegations to which a response is
16 required, Google denies them.

17 167. Google admits that Space Data's presentation to the Google team included some
18 general discussion about winds. Google denies the remaining allegations of this paragraph.

19 168. Google admits that Space Data sent Google an email on February 19, 2008 that
20 included the quoted language. Google denies that Space Data is using the quoted language in
21 context or that the implication is the one that Space Data intends to draw from it. Google denies
22 any remaining allegations of this paragraph.

23 169. Google denies the factual allegations of this paragraph. The remaining allegations
24 of this paragraph set forth argument and legal conclusions to which no response is required. To
25 the extent this paragraph includes any additional allegations to which a response is required,
26 Google denies them. In particular, Google denies Space Data's characterization of the terms of
27 the parties' NDA.

28 170. Google denies the allegations of this paragraph.

1 171. Google admits that as part of its tour of Space Data's facilities the Google team
2 was shown what appeared to be a Space Data balloon payload. Google denies the other factual
3 allegations of this paragraph. The remaining allegations of this paragraph set forth argument,
4 speculation and conclusions to which no response is required. To the extent this paragraph
5 includes any additional allegations to which a response is required, Google denies them.

6 172. Google denies the factual allegations of this paragraph. The remaining allegations
7 of this paragraph set forth argument, speculation and conclusions to which no response is
8 required. To the extent this paragraph includes any additional allegations to which a response is
9 required, Google denies them.

10 173. Google admits that Space Data's February 19, 2008 email included the snippets of
11 language quoted in this paragraph. Google denies that the quoted language included the words in
12 brackets, as appears in this paragraph. Google denies that Space Data is using the quoted
13 language in context or that the implication is the one that Space Data intends to draw from it.
14 Google denies Space Data's characterization of that email. The remaining allegations of this
15 paragraph set forth argument, speculation and conclusions to which no response is required. To
16 the extent this paragraph includes any additional allegations to which a response is required,
17 Google denies them. In particular, Google denies Space Data's characterization of the NDA.

18 174. Google denies the allegations of this paragraph.

19 175. Google admits that Space Data's February 19, 2008 email included the snippets of
20 language quoted in this paragraph. Google denies that Space Data is using the quoted language in
21 context or that the implication is the one that Space Data intends to draw from it. Google denies
22 Space Data's characterization of that email. The remaining allegations of this paragraph set forth
23 argument, speculation and conclusions to which no response is required. To the extent this
24 paragraph includes any additional allegations to which a response is required, Google denies
25 them. In particular, Google denies Space Data's characterization of the terms of the NDA.

26 176. Google is without knowledge or information sufficient to form a belief as to the
27 truth of the factual allegations of this paragraph concerning the security of Space Data's NOC,
28 and on that basis denies them. Google denies the remaining allegations of this paragraph.

1 177. Google admits that Space Data's February 19, 2008 email included the snippets of
2 language quoted in this paragraph. Google denies that Space Data is using the quoted language in
3 context or that the implication is the one that Space Data intends to draw from it. Google denies
4 Space Data's characterization of that email. The remaining allegations of this paragraph set forth
5 argument, speculation and conclusions to which no response is required. To the extent this
6 paragraph includes any additional allegations to which a response is required, Google denies
7 them. In particular, Google denies Space Data's characterization of the terms of the NDA.

8 178. Google admits that it was sent information referenced in paragraphs 140-151 after
9 the effective date of the parties' NDA and that Space Data designated that information
10 confidential. Google denies that any of this information is a trade secret, and denies the
11 remaining factual allegations of this paragraph. This paragraph also includes argument,
12 speculation and conclusions to which no response is required, but to the extent a response is
13 required, Google denies the allegations.

14 179. The allegations of this paragraph set forth argument, speculation and conclusions
15 to which no response is required. To the extent this paragraph includes any allegations to which a
16 response is required, Google denies them. In particular, Google denies Space Data's
17 characterization of the terms and conditions of the parties' NDA, and denies Space Data's
18 conclusion that it properly designated its alleged trade secrets under the NDA.

19 **I. Google Uses Space Data's Trade Secrets**

20 180. The allegations of this paragraph set forth argument, speculation and conclusions
21 to which no response is required. To the extent this paragraph includes any allegations to which a
22 response is required, Google denies them.

23 181. Google is without knowledge or information sufficient to form a belief as to the
24 truth of the factual allegations of this paragraph concerning Space Data's purported wind-related
25 research and development work, and on that basis denies them. Google denies the other factual
26 allegations of this paragraph. The remaining allegations of this paragraph set forth argument,
27 speculation and conclusions to which no response is required. To the extent this paragraph
28 includes any additional allegations to which a response is required, Google denies them.

1 182. Google denies the factual allegations of this paragraph. In particular, Google
2 denies that it was shown or provided with any Space Data trade secrets before or during its visit
3 to Space Data or that it has used any Space Data proprietary or trade secret information in any
4 way in connection with Project Loon. The remaining allegations of this paragraph set forth
5 argument, speculation and conclusions to which no response is required. To the extent this
6 paragraph includes any additional allegations to which a response is required, Google denies
7 them.

8 183. Google is without knowledge or information sufficient to form a belief as to the
9 truth of the factual allegations of this paragraph concerning Space Data's research and
10 development of its purported "proprietary systems for monitoring its balloon constellation,
11 controlling altitude with its hover algorithm, managing thermal heat regulation, and operating its
12 systems from the NOC," and on that basis denies them. Google denies the other factual
13 allegations of this paragraph. In particular, Google denies that it was shown or provided with any
14 Space Data trade secrets before or during its visit to Space Data or that it has used any Space Data
15 proprietary or trade secret information in any way in connection with Project Loon. The
16 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
17 no response is required. To the extent this paragraph includes any additional allegations to which
18 a response is required, Google denies them.

19 184. Google admits that Space Data provided Google with certain financial information
20 under the NDA. Google denies the other factual allegations of this paragraph. In particular,
21 Google denies Space Data's characterization of the financial information it shared or the
22 significance or utility of that information. Google further denies that it was shown or provided
23 with any Space Data trade secrets before or during its visit to Space Data or that it has used any
24 Space Data proprietary or trade secret information in any way in connection with Project Loon.
25 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
26 which no response is required. To the extent this paragraph includes any additional allegations to
27 which a response is required, Google denies them.

28

1 185. Google admits that Space Data emailed Google a slide deck which Space Data
2 referred to as “vision slides” in early 2008 and that Space Data marked those slides confidential.
3 Google denies the other factual allegations of this paragraph. In particular, Google denies Space
4 Data’s characterization of the slides it shared or the significance or utility of those slides. Google
5 further denies that it was shown or provided with any Space Data trade secrets before or during its
6 visit to Space Data or that it has used any Space Data proprietary or trade secret information in
7 any way in connection with Project Loon. The remaining allegations of this paragraph set forth
8 argument, speculation and conclusions to which no response is required. To the extent this
9 paragraph includes any additional allegations to which a response is required, Google denies
10 them.

11 186. Google admits that the NDA includes the snippets of language quoted in this
12 paragraph. Google denies that the implication of the quoted language is the one that Space Data
13 intends to draw from it. Google denies Space Data’s summarization and characterization of the
14 terms of the NDA. Google further denies that it was shown or provided with any Space Data
15 trade secrets before or during its visit to Space Data or that it has used any Space Data proprietary
16 or trade secret information in any way in connection with Project Loon. Google denies the other
17 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
18 argument and legal conclusions to which no response is required. To the extent this paragraph
19 includes any additional allegations to which a response is required, Google denies them.

20 187. Google admits that the NDA contains a “residuals” clause that includes the
21 language quoted in this paragraph. Google denies that the quoted language placed emphasis on
22 any words or included the words in brackets, as appears in this paragraph. Google denies that
23 Space Data is using the quoted language in context or that the implication is the one that Space
24 Data intends to draw from it. Google denies Space Data’s characterization of the NDA. Google
25 denies the other factual allegations in this paragraph. In particular, Google denies that it has
26 breached any provision of the NDA, that it was shown or provided with any Space Data trade
27 secrets before or during its visit to Space Data or that it has used any Space Data proprietary or
28 trade secret information in any way in connection with Project Loon. The remaining allegations

1 of this paragraph set forth argument, speculation and conclusions to which no response is
2 required. To the extent this paragraph includes any additional allegations to which a response is
3 required, Google denies them.

4 188. Google denies the factual allegations of this paragraph. In particular, Google
5 denies that it has breached any provision of the NDA, that it was shown or provided with any
6 Space Data trade secrets before or during its visit to Space Data or that it has used any Space Data
7 proprietary or trade secret information in any way in connection with Project Loon. The
8 remaining allegations of this paragraph set forth argument, speculation and conclusions to which
9 no response is required. To the extent this paragraph includes any additional allegations to which
10 a response is required, Google denies them.

11 189. Google denies the allegations of this paragraph.

12 **J. Defendants Continue to Use Space Data's Trade Secrets**

13 190. The allegations of this paragraph set forth argument and legal conclusions to
14 which no response is required. To the extent this paragraph includes any allegations to which a
15 response is required, Google denies them

16 191. The allegations of this paragraph set forth argument and legal conclusions to
17 which no response is required. To the extent this paragraph includes any allegations to which a
18 response is required, Google denies them

19 192. Google denies that it has acquired, disclosed or used any Space Data trade secrets
20 or that it has used any Space Data confidential or proprietary information in any way in
21 connection with Project Loon. Google is without knowledge or information sufficient to form a
22 belief as to the truth of the remaining factual allegations of this paragraph, and on that basis
23 denies them.

24 193. Google denies that it has acquired, disclosed or used any Space Data trade secrets
25 or that it has used any Space Data confidential or proprietary information in any way in
26 connection with Project Loon. Google is without knowledge or information sufficient to form a
27 belief as to the truth of the remaining allegations of this paragraph, and on that basis denies them.
28

1 This paragraph also includes argument, speculation and conclusions to which no response is
2 required, but to the extent a response is required, Google denies the allegations.

3 194. Google admits that it has flown Project Loon balloons over Peru since May 2016.
4 Google admits that in 2017, Project Loon provided internet connectivity to users in a flood
5 ravaged region of Peru. Google admits that one of its representatives made the statement quoted
6 in this paragraph. Google denies that the quoted language placed emphasis on any words or
7 included ellipses, as appears in this paragraph. Google denies that Space Data is using the quoted
8 language in context or that the implication is the one that Space Data intends to draw from it.
9 Google denies the remaining allegations of this paragraph. In particular, Google denies that it has
10 acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data
11 confidential or proprietary information in any way in connection with Project Loon.

12 195. Google is without knowledge or information sufficient to form a belief as to origin
13 or accuracy of the quotation alleged in this paragraph, and on that basis denies the allegation.
14 Google denies the remaining allegations of this paragraph. In particular, Google denies that it has
15 acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data
16 confidential or proprietary information in any way in connection with Project Loon.

17 196. Google admits that it has periodically flown balloons over the United States.
18 Google is without knowledge or information sufficient to form a belief as to the truth or accuracy
19 of the allegations concerning FlightRadar24, and on that basis denies them. Google denies the
20 remaining allegations of this paragraph. In particular, Google denies that it has acquired,
21 disclosed or used any Space Data trade secrets or that it has used any Space Data confidential or
22 proprietary information in any way in connection with Project Loon.

23 197. Google admits that a Project Loon balloon flew over Yellowstone National Park in
24 September 2016. Google admits that it launches balloons from Winnemucca Nevada, which then
25 fly over portions of the United States. Google denies the remaining allegations of this paragraph.
26 In particular, Google denies that it has acquired, disclosed or used any Space Data trade secrets or
27 that it has used any Space Data confidential or proprietary information in any way in connection
28 with Project Loon.

1 198. Google admits that the image reproduced in this paragraph is from Google.
2 Google denies the remaining allegations of this paragraph.

3 199. Google denies the allegations of this paragraph. In particular, Google denies that it
4 has acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data
5 confidential or proprietary information in any way in connection with Project Loon.

6 200. Google admits that it received the items alleged in this paragraph . Google admits
7 that the quoted language appears in a Google document. Google denies that the quoted language
8 included the words in brackets, as appears in this paragraph. Google denies that Space Data is
9 using the quoted language in context or that the implication is the one that Space Data intends to
10 draw from it. Google denies any remaining allegations of this paragraph.

11 201. Google admits that it has dedicated significant funding and personnel to Project
12 Loon since 2016. Google denies that the specific employee and budget numbers alleged in this
13 paragraph are accurate. Google denies the remaining allegations of this paragraph. In particular,
14 Google denies that it has acquired, disclosed or used any Space Data trade secrets or that it has
15 used any Space Data confidential or proprietary information in any way in connection with
16 Project Loon.

17 202. Google admits that its Project Loon balloons are launched from the state of
18 Nevada in the United States and from the United States territory of Puerto Rico. Google admits
19 that its Project Loon balloons are manufactured in the United States. Google admits that its
20 Project Loon balloons are generally monitored and controlled from Mountain View, California.
21 Google denies the other factual allegations of this paragraph. The remaining allegations of this
22 paragraph set forth argument, speculation and conclusions to which no response is required. To
23 the extent this paragraph includes any additional allegations to which a response is required,
24 Google denies them.

25 203. Google denies the allegations of this paragraph. In particular, Google denies that it
26 has acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data
27 confidential or proprietary information in any way in connection with Project Loon.

28

204. Google denies the allegations of this paragraph. In particular, Google denies that it has acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data confidential or proprietary information in any way in connection with Project Loon.

205. Google denies the allegations of this paragraph. In particular, Google denies that it has acquired, disclosed or used any Space Data trade secrets or that it has used any Space Data confidential or proprietary information in any way in connection with Project Loon.

K. Google's Project Loon

206. Google denies the allegations of this paragraph.

207. Google admits the allegations of this paragraph.

208. Google admits the allegations of this paragraph.

209. Google admits that a role of the Rapid Evaluation Team is to quickly vet the viability of proposed research projects. The remaining allegations of this paragraph set forth argument, speculation and conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

210. Google admits that Mike Cassidy made the statement quoted in this paragraph. Google denies that the quoted language included the words in brackets, as appears in this paragraph. Google denies that Space Data is using the quoted language in context or that the implication is the one that Space Data intends to draw from it. This paragraph also includes argument, speculation and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations.

211. Google admits that Richard DeVaul reported to Astro Teller when Mr. DeVaul joined X. Google denies remaining the allegations of this paragraph.

212. Google denies the allegations of this paragraph.

213. Google denies the allegations of this paragraph.

214. Google denies the allegations of this paragraph.

215. Google denies the allegations of this paragraph.

1 216. Google admits that DeVaul and others at Google developed techniques for
2 controlling the direction of travel of a balloon through adjustments to the balloon's altitude.
3 Google denies the other factual allegations of this paragraph. The remaining allegations of this
4 paragraph set forth argument, speculation and conclusions to which no response is required. To
5 the extent this paragraph includes any additional allegations to which a response is required,
6 Google denies them.

7 217. Google admits the allegations of this paragraph.

8 218. Google admits the allegations of this paragraph.

9 219. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the factual allegations of this paragraph concerning the subject matter of the photograph
11 reproduced in this paragraph, and on that basis denies them. The remaining allegations of this
12 paragraph set forth argument, speculation and conclusions to which no response is required. To
13 the extent this paragraph includes any additional allegations to which a response is required,
14 Google denies them.

15 220. Google admits the allegations of this paragraph.

16 221. The allegations of this paragraph set forth argument, speculation, and conclusions
17 to which no response is required. To the extent this paragraph includes any allegations to which a
18 response is required, Google denies them.

19 222. Google admits that between August and December 2011, DeVaul and others
20 working with him continued to launch balloons. The remaining allegations of this paragraph set
21 forth argument, speculation and conclusions to which no response is required. To the extent this
22 paragraph includes any additional allegations to which a response is required, Google denies
23 them.

24 223. Google admits that it has marked Project Loon balloon payloads with the language
25 quoted in this paragraph. Google denies that the quoted language included the words in brackets,
26 as appears in this paragraph. The remaining allegations of this paragraph set forth argument,
27 speculation and conclusions to which no response is required. To the extent this paragraph
28 includes any additional allegations to which a response is required, Google denies them.

1 224. Google admits that from 2011 through June 2016, it launched and landed nearly a
2 thousand Loon balloons. Google further admits that it has accumulated many thousands of hours
3 of flight time, collecting wind data, and that it has refined its balloon-related technology. Google
4 is without knowledge or information sufficient to form a belief as to the truth of the factual
5 allegations of this paragraph concerning whether it has accumulated hundreds of thousands of
6 hours of flight time, and on that basis denies them. The remaining allegations of this paragraph
7 set forth argument, speculation and conclusions to which no response is required. To the extent
8 this paragraph includes any additional allegations to which a response is required, Google denies
9 them.

10 225. Google admits that it had its first publicly announced balloon launch in New
11 Zealand in June 2013. The remaining allegations of this paragraph set forth argument,
12 speculation and conclusions to which no response is required. To the extent this paragraph
13 includes any additional allegations to which a response is required, Google denies them.

14 226. Google admits that in January 2012, it filed the first patent application related to its
15 Project Loon research and development work, and that Google has since filed more than 100
16 patent applications related to that work. Google denies the other factual allegations of this
17 paragraph. The remaining allegations of this paragraph set forth argument, speculation and
18 conclusions to which no response is required. To the extent this paragraph includes any
19 additional allegations to which a response is required, Google denies them.

20 227. Google admits that over time it has refined Project Loon's technology. Google
21 admits that it now purchases balloons from Raven Aerospace. Google is without knowledge or
22 information sufficient to form a belief as to the truth of the other factual allegations of this
23 paragraph, and on that basis denies them. The remaining allegations of this paragraph set forth
24 argument and legal conclusions to which no response is required. To the extent this paragraph
25 includes any additional allegations to which a response is required, Google denies them.

26 228. Google admits allegations of this paragraph.

27 229. Google admits that its balloons are made of polyethylene. Google admits that its
28 balloons have at least two mechanisms for terminating balloon flight and a parachute connected

1 to the balloon payload. Google denies that the mechanisms for terminating balloon flight are as
2 “described below.” Google is without knowledge or information sufficient to form a belief as to
3 the truth of the factual allegations of this paragraph concerning why Space Data may or may not
4 have chosen to use polyethylene balloons, and on that basis denies them. Google denies the other
5 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
6 argument and legal conclusions to which no response is required. To the extent this paragraph
7 includes any additional allegations to which a response is required, Google denies them.

8 230. Google admits the allegations of this paragraph.

9 231. Google admits that it currently launches balloons from Winnemucca, Nevada and
10 Puerto Rico. Google denies the remaining allegations of this paragraph.

11 232. Google admits that its balloons are made in the United States, that Google
12 generally controls its balloons from Mountain View, California, and that Google controls its
13 balloons using, in part, Google hardware and software resident in Mountain View, California.
14 Google denies that its balloons have always been controlled from Mountain View, California or
15 that they are controlled entirely using Google hardware and software resident in Mountain View,
16 California. Google denies the other factual allegations of this paragraph. The remaining
17 allegations of this paragraph set forth argument and legal conclusions to which no response is
18 required. To the extent this paragraph includes any additional allegations to which a response is
19 required, Google denies them.

20 233. Google admits the allegations of this paragraph.

21 234. Google admits that the cited Google website included the image reproduced in this
22 paragraph. Google denies that Space Data is using the image in context or that the implication is
23 the one that Space Data intends to draw from it. The remaining allegations of this paragraph set
24 forth argument, speculation and conclusions to which no response is required. To the extent this
25 paragraph includes any additional allegations to which a response is required, Google denies
26 them.

27 235. Google admits that the ability to control the direction of travel of Project Loon
28 balloons is important to the success of the project. The remaining allegations of this paragraph

1 set forth argument, speculation and conclusions to which no response is required. To the extent
2 this paragraph includes any additional allegations to which a response is required, Google denies
3 them.

4 236. Google is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations of this paragraph, and on that basis denies them.

6 237. Google admits that the cited Google website included the image reproduced in this
7 paragraph. Google denies that Space Data is using the image in context or that the implication is
8 the one that Space Data intends to draw from it. Google denies that Project Loon presently
9 operates as summarily described in the reproduced image. The remaining allegations of this
10 paragraph set forth argument, speculation and conclusions to which no response is required. To
11 the extent this paragraph includes any additional allegations to which a response is required,
12 Google denies them.

13 238. Google admits that Richard DeVaul made the statement quoted in this paragraph
14 in the video cited in this paragraph. Google denies that Space Data is using the quoted language
15 in context or that the implication is the one that Space Data intends to draw from it. Google
16 denies any remaining allegations of this paragraph.

17 239. Google admits that Baris Erkmen made the statement quoted in this paragraph in
18 the video cited in this paragraph. Google denies that Space Data is using the quoted language in
19 context or that the implication is the one that Space Data intends to draw from it. Google denies
20 any remaining allegations of this paragraph.

21 240. Google admits that Mr. Erkmen made the statement quoted in this paragraph in the
22 blog post cited in this paragraph. Google denies that Space Data is using the quoted language in
23 context or that the implication is the one that Space Data intends to draw from it. Google denies
24 the other factual allegations of this paragraph. The remaining allegations of this paragraph set
25 forth argument, speculation and conclusions to which no response is required. To the extent this
26 paragraph includes any additional allegations to which a response is required, Google denies
27 them.

28

1 241. Google admits that Astro Teller made the statement quoted in this paragraph in the
2 video cited in this paragraph. Google denies that Space Data is using the quoted language in
3 context or that the implication is the one that Space Data intends to draw from it. The remaining
4 allegations of this paragraph set forth argument, speculation and conclusions to which no
5 response is required. To the extent this paragraph includes any additional allegations to which a
6 response is required, Google denies them.

7 242. Google admits that Mr. Cassidy made the statement quoted in this paragraph in the
8 video cited in this paragraph. Google denies that Space Data is using the quoted language in
9 context or that the implication is the one that Space Data intends to draw from it. The remaining
10 allegations of this paragraph set forth argument, speculation and conclusions to which no
11 response is required. To the extent this paragraph includes any additional allegations to which a
12 response is required, Google denies them.

13 243. Google admits that the cited Google website included the “Loon: general
14 anatomy” image reproduced in this paragraph. Google denies that Space Data is using the image
15 in context or that the implication is the one that Space Data intends to draw from it. Google
16 denies that Project Loon presently operates as summarily described in the reproduced image.
17 Google admits that the images of balloons included in this paragraph are of Project Loon
18 balloons. The remaining allegations of this paragraph set forth argument, speculation and
19 conclusions to which no response is required. To the extent this paragraph includes any
20 additional allegations to which a response is required, Google denies them.

21 244. Google admits that Larry Page visited Space Data’s facility. Google admits that
22 Mr. Page made the statement quoted in this paragraph in the video cited in this paragraph.
23 Google denies that Space Data is using the quoted language in context or that the implication is
24 the one that Space Data intends to draw from it. Google denies the other factual allegations of
25 this paragraph. The remaining allegations of this paragraph set forth argument, speculation and
26 conclusions to which no response is required. To the extent this paragraph includes any
27 additional allegations to which a response is required, Google denies them.

28

1 245. The allegations of this paragraph set forth argument, speculation and conclusions
2 to which no response is required. To the extent this paragraph includes any allegations to which a
3 response is required, Google denies them.

4 246. Google admits that the language quoted in this paragraph appears in the video
5 cited in this paragraph. Google denies that Space Data is using the quoted language in context or
6 that the implication is the one that Space Data intends to draw from it. Google denies the other
7 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
8 argument, speculation and conclusions to which no response is required. To the extent this
9 paragraph includes any additional allegations to which a response is required, Google denies
10 them.

11 247. Google denies the allegations of this paragraph.

12 248. Google admits that the language quoted and images reproduced in this paragraph
13 are included in the blog post cited in this paragraph. Google denies that the quoted language
14 placed emphasis on any words or included the “***”, as appears in this paragraph. Google denies
15 that Space Data is using the quoted language in context or that the implication is the one that
16 Space Data intends to draw from it. The remaining allegations of this paragraph set forth
17 argument, speculation and conclusions to which no response is required. To the extent this
18 paragraph includes any additional allegations to which a response is required, Google denies
19 them.

20 249. Google denies the factual allegations of this paragraph. The remaining allegations
21 of this paragraph set forth argument, speculation and conclusions to which no response is
22 required. To the extent this paragraph includes any additional allegations to which a response is
23 required, Google denies them.

24 **L. Google Zealously Patens Every Aspect of Project Loon**

25 250. Google admits that it has applied for and obtained patents in connection with
26 Project Loon’s research and development work. Google denies the remaining factual allegations
27 of this paragraph. The remaining allegations of this paragraph set forth argument, speculation
28

1 and conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 251. The allegations of this paragraph set forth argument, speculation and conclusions
4 to which no response is required. To the extent this paragraph includes any allegations to which a
5 response is required, Google denies them.

6 252. Google admits that it is the owner by assignment of the cited United States patent.
7 Google admits that the cited patent includes the quoted language. Google denies that the quoted
8 language placed emphasis on any words or included the ellipses or words in brackets, as appears
9 in this paragraph. Google denies that Space Data is using the quoted language in context or that
10 the implication is the one that Space Data intends to draw from it. The remaining allegations of
11 this paragraph set forth argument, speculation and conclusions to which no response is required.
12 To the extent this paragraph includes any additional allegations to which a response is required,
13 Google denies them.

14 253. Google admits that the patent cited in this paragraph includes the quoted language.
15 Google denies that the quoted language included the ellipses or words in brackets, as appears in
16 this paragraph. Google denies that Space Data is using the quoted language in context or that the
17 implication is the one that Space Data intends to draw from it. The remaining allegations of this
18 paragraph set forth argument, speculation and conclusions to which no response is required. To
19 the extent this paragraph includes any additional allegations to which a response is required,
20 Google denies them.

21 254. Google denies the factual allegations of this paragraph. The remaining allegations
22 of this paragraph set forth argument, speculation and conclusions to which no response is
23 required. To the extent this paragraph includes any additional allegations to which a response is
24 required, Google denies them.

25 255. Google is without knowledge or information sufficient to form a belief as to the
26 truth of the factual allegations of this paragraph concerning what question Minnie Ingersoll may
27 have asked during the visit to Space Data's facilities or what books she may have been shown in
28 response to that question, and therefore denies them. Google denies the other factual allegations

1 of this paragraph. The remaining allegations of this paragraph set forth argument, speculation
2 and conclusions to which no response is required. To the extent this paragraph includes any
3 additional allegations to which a response is required, Google denies them.

4 256. Google admits that it is the owner by assignment of the cited United States patent.
5 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
6 which no response is required. To the extent this paragraph includes any additional allegations to
7 which a response is required, Google denies them.

8 257. Google denies the factual allegations of this paragraph. The remaining allegations
9 of this paragraph set forth argument, speculation and conclusions to which no response is
10 required. To the extent this paragraph includes any additional allegations to which a response is
11 required, Google denies them.

12 258. Google admits that it is the owner by assignment of the cited United States patent.
13 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
14 which no response is required. To the extent this paragraph includes any additional allegations to
15 which a response is required, Google denies them.

16 259. Google admits that it is the owner by assignment of the cited United States patent.
17 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
18 which no response is required. To the extent this paragraph includes any additional allegations to
19 which a response is required, Google denies them.

20 260. Google admits that it is the owner by assignment of the cited United States patent.
21 Google is without knowledge or information sufficient to form a belief as to the truth of the
22 factual allegations of this paragraph concerning what coffee table book in Space Data's lobby
23 may have been passed around during Google's visit to Space Data's facilities or what illustrations
24 that book may have contained. The remaining allegations of this paragraph set forth argument,
25 speculation and conclusions to which no response is required. To the extent this paragraph
26 includes any additional allegations to which a response is required, Google denies them.

27 261. Google admits that it is the owner by assignment of the cited United States patent.
28 The remaining allegations of this paragraph set forth argument, speculation and conclusions to

1 which no response is required. To the extent this paragraph includes any additional allegations to
2 which a response is required, Google denies them.

3 262. Google admits that it is the owner by assignment of the cited United States patent.
4 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
5 which no response is required. To the extent this paragraph includes any additional allegations to
6 which a response is required, Google denies them.

7 263. Google admits that it is the owner by assignment of the cited United States patent.
8 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
9 which no response is required. To the extent this paragraph includes any additional allegations to
10 which a response is required, Google denies them.

11 264. Google admits that it is the owner by assignment of the cited United States patent.
12 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
13 which no response is required. To the extent this paragraph includes any additional allegations to
14 which a response is required, Google denies them.

15 265. Google admits that since January 9, 2012, it has filed at least 102 Project Loon-
16 related patent applications that have subsequently been published, and that many of those
17 applications have matured into issued patents. Google admits that Google filed non-publication
18 requests with respect to the Project Loon-related patent applications it filed in January 2012.
19 Google further admits that there are non-published Google Loon patent applications pending.
20 The remaining allegations of this paragraph set forth argument, speculation and conclusions to
21 which no response is required. To the extent this paragraph includes any additional allegations to
22 which a response is required, Google denies them.

23 **M. The Interference: Google's Copycat Claim Now Belong to Space Data**

24 266. Google denies the factual allegations of this paragraph. The remaining allegations
25 of this paragraph set forth argument, speculation and conclusions to which no response is
26 required. To the extent this paragraph includes any additional allegations to which a response is
27 required, Google denies them.

1 267. Google admits that it filed a patent application on January 9, 2012 with the title
2 quoted in this paragraph. Google admits it also filed a non-publication request. The remaining
3 allegations of this paragraph set forth argument, speculation and conclusions to which no
4 response is required. To the extent this paragraph includes any additional allegations to which a
5 response is required, Google denies them.

6 268. Google admits the allegations of this paragraph.

7 269. Google admits that the background section of the specification of the '678 patent
8 states: "However, there are many areas of the world where data connectivity is still unavailable,
9 or if available, is unreliable and/or costly. Accordingly, additional network infrastructure is
10 desirable." Google admits that the same or similar language appears in other Project Loon-related
11 Google patents. Google denies that Space Data is using the quoted language in context or that the
12 implication is the one that Space Data intends to draw from it. The remaining allegations of this
13 paragraph set forth argument, speculation and conclusions to which no response is required. To
14 the extent this paragraph includes any additional allegations to which a response is required,
15 Google denies them.

16 270. Google admits that the '678 patent contains the language quoted in this paragraph.
17 Google denies that the quoted language placed emphasis on any words or included the ellipses, as
18 appears in this paragraph. Google denies that Space Data is using the quoted language in context
19 or that the implication is the one that Space Data intends to draw from it. The remaining
20 allegations of this paragraph set forth argument and legal conclusions to which no response is
21 required. To the extent this paragraph includes any additional allegations to which a response is
22 required, Google denies them.

23 271. The allegations of this paragraph set forth argument and legal conclusions to
24 which no response is required. To the extent this paragraph includes any allegations to which a
25 response is required, Google denies them.

26 272. The allegations of this paragraph set forth argument and legal conclusions to
27 which no response is required. To the extent this paragraph includes any allegations to which a
28 response is required, Google denies them.

1 273. Google denies the factual allegations of this paragraph. The remaining allegations
2 of this paragraph set forth argument and legal conclusions to which no response is required. To
3 the extent this paragraph includes any additional allegations to which a response is required,
4 Google denies them.

5 274. Google admits that Space Data filed an interference with the Patent Trial and
6 Appeal Board (“PTAB”) on June 1, 2016. The remaining allegations of this paragraph set forth
7 argument and legal conclusions to which no response is required. To the extent this paragraph
8 includes any additional allegations to which a response is required, Google denies them.

9 275. Google admits that it elected not to contest the interference. The remaining
10 allegations of this paragraph set forth argument and legal conclusions to which no response is
11 required. To the extent this paragraph includes any additional allegations to which a response is
12 required, Google denies them.

13 276. Google admits on August 31, 2016, the PTAB issued a ruling in Space Data’s
14 favor, and that on December 22, 2016, a final judgment was issued. Google denies that “the
15 Google application and Google claims went back to the PTO to be assigned to Space Data.” To
16 the contrary, Google still owns the ’678 patent, including the underlying specification and various
17 claims that were not awarded to Space Data as a result of the interference action. Moreover, no
18 claims were ever “assigned” by the Patent and Trademark Office (“PTO”) from Google to Space
19 Data, as reflected in the publicly available assignment records at the PTO. The remaining
20 allegations of this paragraph set forth argument and legal conclusions to which no response is
21 required. To the extent this paragraph includes any additional allegations to which a response is
22 required, Google denies them.

23 277. Google admits that the PTO issued a Notice of Allowance with respect to what is
24 now United States Patent No. 9,678,193 on April 12, 2017, and that the patent issued to Space
25 Data on June 13, 2017. The remaining allegations of this paragraph set forth argument and legal
26 conclusions to which no response is required. To the extent this paragraph includes any
27 additional allegations to which a response is required, Google denies them.

28

278. Google denies the factual allegations of this paragraph. The remaining allegations of this paragraph set forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

COUNT I

(Infringement of United States Patent No. 6,628,941 Against all Defendants)

279. Google incorporates by reference its responses to the allegations of paragraphs 1 to 278 above as its response to this paragraph.

280. Google admits that the '941 patent, on its face, bears the title quoted in this paragraph and an issuance date of September 30, 2003. Google admits that what appears to be a copy of the '941 patent is attached to the Complaint as Exhibit B. Google denies that the '941 patent was duly and legally issued. Google denies any remaining allegations of this paragraph.

281. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

282. Google admits that the cited website included the language quoted in this paragraph. Google denies that Space Data is using the quoted language in context or that the implication is the one that Space Data intends to draw from it. Google denies the remaining allegations of this paragraph, and specifically denies that Google has infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of the '941 patent.

283. Google admits that the cited website included the language quoted in this paragraph. Google denies that Space Data is using the quoted language in context or that the implication is the one that Space Data intends to draw from it. Google denies any remaining allegations of this paragraph.

284. Google admits that the cited website included the images reproduced in this paragraph. Google denies that Space Data is using the images or their contents in context or that the implication is the one that Space Data intends to draw from it. Google denies any other factual allegations of this paragraph. The remaining allegations of this paragraph set forth

1 argument and legal conclusions to which no response is required. To the extent this paragraph
2 includes any additional allegations to which a response is required, Google denies them.

3 285. Google admits that the cited website included the image reproduced in this
4 paragraph. Google denies that Space Data is using the image or its contents in context or that the
5 implication is the one that Space Data intends to draw from it. Google denies any other factual
6 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
7 legal conclusions to which no response is required. To the extent this paragraph includes any
8 additional allegations to which a response is required, Google denies them.

9 286. Google admits that the cited website included the images reproduced in this
10 paragraph. Google denies that Space Data is using the images or their contents in context or that
11 the implication is the one that Space Data intends to draw from it. Google denies any other
12 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
13 argument and legal conclusions to which no response is required. To the extent this paragraph
14 includes any additional allegations to which a response is required, Google denies them.

15 287. Google admits that the cited website included the images reproduced in this
16 paragraph. Google denies that Space Data is using the images or their contents in context or that
17 the implication is the one that Space Data intends to draw from it. Google denies any other
18 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
19 argument and legal conclusions to which no response is required. To the extent this paragraph
20 includes any additional allegations to which a response is required, Google denies them.

21 288. Google admits that the cited google.com website included the second image
22 reproduced in this paragraph, that Mike Cassidy is pictured in the first image reproduced in this
23 paragraph, and that Mr. Cassidy made the statement excerpted in this paragraph in the video cited
24 in this paragraph. Google denies that Space Data is using the images or their contents or the
25 quoted language in context or that the implication is the one that Space Data intends to draw from
26 it. Google denies any other factual allegations of this paragraph. The remaining allegations of
27 this paragraph set forth argument and legal conclusions to which no response is required. To the
28

1 extent this paragraph includes any additional allegations to which a response is required, Google
2 denies them.

3 289. Google admits that the cited website included the images reproduced in this
4 paragraph. Google denies that Space Data is using the images or their contents in context or that
5 the implication is the one that Space Data intends to draw from it. Google denies any other
6 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
7 argument and legal conclusions to which no response is required. To the extent this paragraph
8 includes any additional allegations to which a response is required, Google denies them.

9 290. Google admits that the cited websites included the images and text reproduced in
10 this paragraph. Google denies that Space Data is using the images or their contents or the quoted
11 language in context or that the implication is the one that Space Data intends to draw from it.
12 Google denies any other factual allegations of this paragraph. The remaining allegations of this
13 paragraph set forth argument and legal conclusions to which no response is required. To the
14 extent this paragraph includes any additional allegations to which a response is required, Google
15 denies them.

16 291. Google denies the allegations of this paragraph, and specifically denies that
17 Google has infringed, directly or indirectly, or is liable for infringement of any valid and
18 enforceable claim of the '941 patent.

19 292. Google admits that Space Data sent Google presentation slide decks that noted in
20 passing that Space Data had patents granted. Google denies that Space Data sent these materials
21 in September 2007. Google admits that Google representatives visited Space Data's facilities on
22 February 15, 2008 and that they participated in launching two balloons during the visit. Google
23 admits that in February 2012, the applicants for the '678 patent submitted an information
24 disclosure statement listing, among many other references, the '941 patent. Google denies the
25 remaining allegations of this paragraph, and specifically denies that it has infringed, directly or
26 indirectly, or is liable for infringement of any valid and enforceable claim of the '941 patent or
27 that it has done so willfully, intentionally, or in subjective bad faith.

28 293. Google denies the allegations of this paragraph.

1 294. Google denies the allegations of this paragraph.

2 295. Google denies the allegations of this paragraph.

3 296. Google denies the allegations of this paragraph.

4 **COUNT II**

5 **(Misappropriation of Trade Secrets Pursuant to 18 U.S.C. §§ 1836(b) and 1837 Against All**
6 **Defendants)**

7 297. Google incorporates by reference its responses to the allegations of paragraphs 1 to
8 278 above as its response to this paragraph.

9 298. Google is without knowledge or information sufficient to form a belief as to the
10 truth of the factual allegations of this paragraph concerning the details of certain of Space Data's
11 purported security measures. Google denies that Space Data has undertaken reasonable measures
12 to keep secret its proprietary confidential information. Google denies that Space Data disclosed
13 any trade secrets to Google or that it did so in a manner compliant with the NDA. Google denies
14 the allegations of this paragraph.

15 299. Google denies the allegations of this paragraph.

16 300. Google denies the allegations of this paragraph, and specifically denies that it has
17 misappropriated any Space Data trade secret.

18 301. Google is without knowledge or information sufficient to form a belief as to the
19 truth of the factual allegations of this paragraph concerning whether and when Space Data has
20 deployed on balloons or their functionality, and therefore denies them. Google denies the
21 remaining allegations of this paragraph.

22 302. Defendants admit that they are organized under the laws of the state of Delaware.
23 Google denies the remaining allegations of this paragraph.

24 303. Google denies the allegations of this paragraph.

25 304. Google denies the allegations of this paragraph.

26 305. Google denies the allegations of this paragraph.

COUNT III

(Misappropriation of Trade Secret Pursuant to California Civil Code § 3426, *et seq.* Against All Defendants)

306. Google incorporates by reference its responses to the allegations of paragraphs 1 to 278 above as its response to this paragraph.

307. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations of this paragraph concerning the details of certain of Space Data's purported security measures. Google denies that Space Data has undertaken reasonable measures to keep secret its proprietary confidential information. Google denies that Space Data disclosed any trade secrets to Google or that it did so in a manner compliant with the NDA. Google denies the allegations of this paragraph.

308. Google denies the allegations of this paragraph.

309. Google denies the allegations of this paragraph, and specifically denies that it has misappropriated any Space Data trade secret.

310. Google denies the allegations of this paragraph.

311. Google denies the allegations of this paragraph.

312. Google denies the allegations of this paragraph.

COUNT IV

(Breach of Written Contract Against All Defendants)

313. Google incorporates by reference its responses to the allegations of paragraphs 1 to 278 above as its response to this paragraph.

314. Google admits that the Google and Space Data entered into an NDA with an effective date of December 1, 2007 and that a copy of that NDA appears to be attached to the Complaint as Exhibit A. Google denies any remaining allegations of this paragraph.

315. Google denies the allegations of this paragraph.

316. Google denies the allegations of this paragraph.

317. Google denies the allegations of this paragraph.

318. Google admits that the parties' NDA contains the snippets of language quoted in this paragraph. Google denies that Space Data is using the quoted language in context or that the implication is the one that Space Data intends to draw from it. Google denies Space Data's characterization of the terms of the NDA. Google denies the remaining allegations of this paragraph.

319. Google admits that the parties' NDA contains the snippets of language quoted in this paragraph. Google denies that Space Data is using the quoted language in context or that the implication is the one that Space Data intends to draw from it. Google denies Space Data's characterization of the terms of the NDA. Google denies the remaining allegations of this paragraph.

320. Google denies the allegations of this paragraph.

321. Google denies the allegations of this paragraph.

COUNT V

(Infringement of United States Patent No. 9,632,503 Against all Defendants)

322. Google incorporates by reference its responses to the allegations of paragraphs 1 to 278 above as its response to this paragraph.

323. Google admits that the '503 patent, on its face, bears the title quoted in this paragraph and an issuance date of April 25, 2017. Google admits that what appears to be a copy of the '503 patent is attached to the Complaint as Exhibit E. Google denies that the '503 patent was duly and legally issued. Google denies any remaining allegations of this paragraph.

324. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

325. Google denies the allegations of this paragraph, and specifically denies that Google has infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of the '503 patent.

326. Google admits that the cited website included the images reproduced in this paragraph. Google denies that Space Data is using the images or their contents in context or that the implication is the one that Space Data intends to draw from it. Google denies any other

1 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
2 argument and legal conclusions to which no response is required. To the extent this paragraph
3 includes any additional allegations to which a response is required, Google denies them.

4 327. Google admits that the cited website included the images reproduced in this
5 paragraph. Google denies that Space Data is using the images or their contents in context or that
6 the implication is the one that Space Data intends to draw from it. Google denies any other
7 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
8 argument and legal conclusions to which no response is required. To the extent this paragraph
9 includes any additional allegations to which a response is required, Google denies them.

10 328. Google admits that the cited website included the image reproduced in this
11 paragraph. Google denies that the original image included the red and blue boxes appearing in
12 the image in this paragraph. Google denies that Space Data is using the image or its contents in
13 context or that the implication is the one that Space Data intends to draw from it. Google denies
14 any other factual allegations of this paragraph. The remaining allegations of this paragraph set
15 forth argument and legal conclusions to which no response is required. To the extent this
16 paragraph includes any additional allegations to which a response is required, Google denies
17 them.

18 329. Google admits that the cited website included the image reproduced in this
19 paragraph. Google denies that the original image included the red and blue boxes appearing in
20 the image in this paragraph. Google denies that Space Data is using the image or its contents in
21 context or that the implication is the one that Space Data intends to draw from it. Google denies
22 any other factual allegations of this paragraph. The remaining allegations of this paragraph set
23 forth argument and legal conclusions to which no response is required. To the extent this
24 paragraph includes any additional allegations to which a response is required, Google denies
25 them.

26 330. Google admits that the cited website included the image reproduced in this
27 paragraph. Google denies that the original image included the green and blue boxes or
28 underlining appearing in the image in this paragraph. Google denies that Space Data is using the

1 image or its contents in context or that the implication is the one that Space Data intends to draw
2 from it. Google denies any other factual allegations of this paragraph. The remaining allegations
3 of this paragraph set forth argument and legal conclusions to which no response is required. To
4 the extent this paragraph includes any additional allegations to which a response is required,
5 Google denies them.

6 331. Google admits that the cited website included the image reproduced in this
7 paragraph. Google denies that the original image included the red and blue boxes or the green
8 circle appearing in the image in this paragraph. Google denies that Space Data is using the image
9 or its contents in context or that the implication is the one that Space Data intends to draw from it.
10 Google denies any other factual allegations of this paragraph. The remaining allegations of this
11 paragraph set forth argument and legal conclusions to which no response is required. To the
12 extent this paragraph includes any additional allegations to which a response is required, Google
13 denies them.

14 332. Google admits that the cited website included the images reproduced in this
15 paragraph. Google denies that Space Data is using the images or their contents in context or that
16 the implication is the one that Space Data intends to draw from it. Google denies any other
17 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
18 argument and legal conclusions to which no response is required. To the extent this paragraph
19 includes any additional allegations to which a response is required, Google denies them.

20 333. Google admits that the cited website included the image reproduced in this
21 paragraph. Google denies that Space Data is using the image or its contents in context or that the
22 implication is the one that Space Data intends to draw from it. Google denies any other factual
23 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
24 legal conclusions to which no response is required. To the extent this paragraph includes any
25 additional allegations to which a response is required, Google denies them.

26 334. Google admits that the cited website included the images reproduced in this
27 paragraph. Google denies that Space Data is using the images or their contents in context or that
28 the implication is the one that Space Data intends to draw from it. Google denies any other

1 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
2 argument and legal conclusions to which no response is required. To the extent this paragraph
3 includes any additional allegations to which a response is required, Google denies them.

4 335. Google admits that the cited website included the image reproduced in this
5 paragraph. Google denies that Space Data is using the image or its contents in context or that the
6 implication is the one that Space Data intends to draw from it. Google denies any other factual
7 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
8 legal conclusions to which no response is required. To the extent this paragraph includes any
9 additional allegations to which a response is required, Google denies them.

10 336. Google admits that the cited website included the image reproduced in this
11 paragraph. Google denies that Space Data is using the image or its contents in context or that the
12 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
13 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that
14 Space Data is using the quoted language in context or that the implication is the one that Space
15 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
16 remaining allegations of this paragraph set forth argument and legal conclusions to which no
17 response is required. To the extent this paragraph includes any additional allegations to which a
18 response is required, Google denies them.

19 337. Google admits that the cited website included the images reproduced in this
20 paragraph. Google denies that Space Data is using the images or their contents in context or that
21 the implication is the one that Space Data intends to draw from it. Google denies any other
22 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
23 argument and legal conclusions to which no response is required. To the extent this paragraph
24 includes any additional allegations to which a response is required, Google denies them.

25 338. Google admits that the cited website included the image reproduced in this
26 paragraph. Google denies that Space Data is using the image or its contents in context or that the
27 implication is the one that Space Data intends to draw from it. Google denies any other factual
28 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and

1 legal conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 339. Google admits that the cited website included the image reproduced in this
4 paragraph. Google denies that Space Data is using the image or its contents in context or that the
5 implication is the one that Space Data intends to draw from it. Google denies any other factual
6 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
7 legal conclusions to which no response is required. To the extent this paragraph includes any
8 additional allegations to which a response is required, Google denies them.

9 340. Google admits that the cited website included the image reproduced in this
10 paragraph. Google denies that Space Data is using the image or its contents in context or that the
11 implication is the one that Space Data intends to draw from it. Google denies any other factual
12 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
13 legal conclusions to which no response is required. To the extent this paragraph includes any
14 additional allegations to which a response is required, Google denies them.

15 341. Google admits that the cited website included the image reproduced in this
16 paragraph. Google denies that Space Data is using the image or its contents in context or that the
17 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
18 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that
19 Space Data is using the quoted language in context or that the implication is the one that Space
20 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
21 remaining allegations of this paragraph set forth argument and legal conclusions to which no
22 response is required. To the extent this paragraph includes any additional allegations to which a
23 response is required, Google denies them.

24 342. Google admits that the cited website included the image reproduced in this
25 paragraph. Google denies that Space Data is using the image or its contents in context or that the
26 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
27 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that
28 Space Data is using the quoted language in context or that the implication is the one that Space

1 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
2 remaining allegations of this paragraph set forth argument and legal conclusions to which no
3 response is required. To the extent this paragraph includes any additional allegations to which a
4 response is required, Google denies them.

5 343. Google denies the allegations of this paragraph, and specifically denies that
6 Google has infringed, directly or indirectly, or is liable for infringement of any valid and
7 enforceable claim of the '503 patent.

8 344. Google admits that on April 7, 2017, Space Data's litigation counsel in this action
9 sent an email to Google's litigation counsel in this action stating "the 020 app has issued and we
10 will have it in hand in two weeks. We will add this patent to case. Will goog stipulate or do we
11 need to file for leave?" Google admits that on April 25, 2017, Space Data's litigation counsel in
12 this action sent an email to Google's litigation counsel in this action stating that the '503 patent
13 had issued. Google denies the remaining allegations of this paragraph.

14 345. Google admits that Space Data sent Google presentation slide decks that noted in
15 passing that Space Data had patents granted. Google denies that Space Data sent these materials
16 in September 2007. Google admits that Google representatives visited Space Data's facilities on
17 February 15, 2008 and that they participated in launching two balloons during the visit. Google
18 denies the remaining allegations of this paragraph.

19 346. Google admits that on April 12, 2007, Space Data's litigation counsel in this action
20 emailed Google's litigation counsel in this action the materials listed in this paragraph. Google
21 admits that the claims of the '503 patent did not change during prosecution. Google denies the
22 remaining allegations of this paragraph.

23 347. Google denies the allegations of this paragraph, and specifically denies that it has
24 infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of
25 the '503 patent or that it has done so willfully or intentionally.

26 348. Google denies the allegations of this paragraph.

27 349. Google denies the allegations of this paragraph.

28 350. Google denies the allegations of this paragraph.

351. Google denies the allegations of this paragraph.

COUNT VI

(Infringement of United States Patent No. 9,643,706 Against all Defendants)

352. Google incorporates by reference its responses to the allegations of paragraphs 1 to 278 above as its response to this paragraph.

353. Google admits that the '706 patent, on its face, bears the title quoted in this paragraph and an issuance date of May 9, 2017. Google admits that what appears to be a copy of the '706 patent is attached to the Complaint as Exhibit F. Google denies that the '706 was duly and legally issued. Google denies any remaining allegations of this paragraph.

354. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

355. Google denies the allegations of this paragraph, and specifically denies that Google has infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of the '706 patent.

356. Google admits that the cited website included the images reproduced in this paragraph. Google denies that the original image included the greenish circle around the balloon or the yellow triangle in the second image in this paragraph. Google denies that Space Data is using the images or their contents in context or that the implication is the one that Space Data intends to draw from it. Google denies any other factual allegations of this paragraph. The remaining allegations of this paragraph set forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

357. Google admits that the cited website included the image reproduced in this paragraph. Google denies that Space Data is using the image or its contents in context or that the implication is the one that Space Data intends to draw from it. Google denies any other factual allegations of this paragraph. The remaining allegations of this paragraph set forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any additional allegations to which a response is required, Google denies them.

1 358. Google admits that the cited website included the image reproduced in this
2 paragraph. Google denies that the original image included the green and blue boxes or
3 underlining appearing in the image in this paragraph. Google denies that Space Data is using the
4 image or its contents in context or that the implication is the one that Space Data intends to draw
5 from it. Google denies any other factual allegations of this paragraph. The remaining allegations
6 of this paragraph set forth argument and legal conclusions to which no response is required. To
7 the extent this paragraph includes any additional allegations to which a response is required,
8 Google denies them.

9 359. Google admits that the cited website included the image reproduced in this
10 paragraph. Google denies that the original image included the red and blue boxes or the green
11 circle appearing in the image in this paragraph. Google denies that Space Data is using the image
12 or its contents in context or that the implication is the one that Space Data intends to draw from it.
13 Google denies any other factual allegations of this paragraph. The remaining allegations of this
14 paragraph set forth argument and legal conclusions to which no response is required. To the
15 extent this paragraph includes any additional allegations to which a response is required, Google
16 denies them.

17 360. Google admits that the cited website included the images reproduced in this
18 paragraph. Google denies that Space Data is using the images or their contents in context or that
19 the implication is the one that Space Data intends to draw from it. Google denies any other
20 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
21 argument and legal conclusions to which no response is required. To the extent this paragraph
22 includes any additional allegations to which a response is required, Google denies them.

23 361. Google admits that the cited website included the image reproduced in this
24 paragraph. Google denies that Space Data is using the image or its contents in context or that the
25 implication is the one that Space Data intends to draw from it. Google denies any other factual
26 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
27 legal conclusions to which no response is required. To the extent this paragraph includes any
28 additional allegations to which a response is required, Google denies them.

1 362. Google admits that the cited website included the images reproduced in this
2 paragraph. Google denies that Space Data is using the images or their contents in context or that
3 the implication is the one that Space Data intends to draw from it. Google denies any other
4 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
5 argument and legal conclusions to which no response is required. To the extent this paragraph
6 includes any additional allegations to which a response is required, Google denies them.

7 363. Google admits that the cited website included the image reproduced in this
8 paragraph. Google denies that Space Data is using the image or its contents in context or that the
9 implication is the one that Space Data intends to draw from it. Google denies any other factual
10 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
11 legal conclusions to which no response is required. To the extent this paragraph includes any
12 additional allegations to which a response is required, Google denies them.

13 364. Google admits that the cited website included the image reproduced in this
14 paragraph. Google denies that Space Data is using the image or its contents in context or that the
15 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
16 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that
17 Space Data is using the quoted language in context or that the implication is the one that Space
18 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
19 remaining allegations of this paragraph set forth argument and legal conclusions to which no
20 response is required. To the extent this paragraph includes any additional allegations to which a
21 response is required, Google denies them.

22 365. Google admits that the cited website included the images reproduced in this
23 paragraph. Google denies that Space Data is using the images or their contents in context or that
24 the implication is the one that Space Data intends to draw from it. Google denies any other
25 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
26 argument and legal conclusions to which no response is required. To the extent this paragraph
27 includes any additional allegations to which a response is required, Google denies them.

28

1 366. Google admits that the cited website included the image reproduced in this
2 paragraph. Google denies that Space Data is using the image or its contents in context or that the
3 implication is the one that Space Data intends to draw from it. Google denies any other factual
4 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
5 legal conclusions to which no response is required. To the extent this paragraph includes any
6 additional allegations to which a response is required, Google denies them.

7 367. Google admits that the cited website included the image reproduced in this
8 paragraph. Google denies that Space Data is using the image or its contents in context or that the
9 implication is the one that Space Data intends to draw from it. Google denies any other factual
10 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
11 legal conclusions to which no response is required. To the extent this paragraph includes any
12 additional allegations to which a response is required, Google denies them.

13 368. Google admits that the cited website included the image reproduced in this
14 paragraph. Google denies that Space Data is using the image or its contents in context or that the
15 implication is the one that Space Data intends to draw from it. Google denies any other factual
16 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
17 legal conclusions to which no response is required. To the extent this paragraph includes any
18 additional allegations to which a response is required, Google denies them.

19 369. Google admits that the cited website included the image reproduced in this
20 paragraph. Google denies that Space Data is using the image or its contents in context or that the
21 implication is the one that Space Data intends to draw from it. Google denies any other factual
22 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
23 legal conclusions to which no response is required. To the extent this paragraph includes any
24 additional allegations to which a response is required, Google denies them.

25 370. Google admits that the cited website included the image reproduced in this
26 paragraph. Google denies that Space Data is using the image or its contents in context or that the
27 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
28 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that

1 Space Data is using the quoted language in context or that the implication is the one that Space
2 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
3 remaining allegations of this paragraph set forth argument and legal conclusions to which no
4 response is required. To the extent this paragraph includes any additional allegations to which a
5 response is required, Google denies them.

6 371. Google admits that the cited website included the image reproduced in this
7 paragraph. Google denies that Space Data is using the image or its contents in context or that the
8 implication is the one that Space Data intends to draw from it. Google admits that the ICAO
9 Rules of the Air, Annex 2 includes the language quoted in this paragraph. Google denies that
10 Space Data is using the quoted language in context or that the implication is the one that Space
11 Data intends to draw from it. Google denies any other factual allegations of this paragraph. The
12 remaining allegations of this paragraph set forth argument and legal conclusions to which no
13 response is required. To the extent this paragraph includes any additional allegations to which a
14 response is required, Google denies them.

15 372. Google denies the allegations of this paragraph, and specifically denies that
16 Google has infringed, directly or indirectly, or is liable for infringement of any valid and
17 enforceable claim of the '706 patent.

18 373. Google admits that on April 21, 2017, Space Data's litigation counsel in this action
19 sent an email to Google's litigation counsel in this action attaching the issue notification for the
20 '706 patent. Google denies the remaining allegations of this paragraph.

21 374. Google admits that Space Data sent Google presentation slide deck that noted in
22 passing Space Data had patents granted. Google denies that Space Data sent these materials in
23 September 2007. Google admits that Google representatives visited Space Data's facilities on
24 February 15, 2008 and that they participated in launching two balloons during the visit. Google
25 denies the remaining allegations of this paragraph.

26 375. Google admits that Space Data's litigation counsel in this action provided
27 Google's litigation counsel in this action with a copy of the file wrapper for the '706 patent
28 application on April 18, 2017 and, later, with a draft claim chart for the '706 patent. Google

1 admits that the claims of the '706 patent did not change during prosecution. Google denies the
2 remaining allegations of this paragraph.

3 376. Google denies the allegations of this paragraph, and specifically denies that it has
4 infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of
5 the '706 patent or that it has done so willfully or intentionally.

6 377. Google denies the allegations of this paragraph.

7 378. Google denies the allegations of this paragraph.

8 379. Google denies the allegations of this paragraph.

9 380. Google denies the allegations of this paragraph.

10 **COUNT VII**

11 **(Infringement of United States Patent No. 9,678,193 Against all Defendants)**

12 381. Google incorporates by reference its responses to the allegations of paragraphs 1 to
13 278 above as its response to this paragraph.

14 382. Google admits that the '193 patent, on its face, bears the title quoted in this
15 paragraph and an issuance date of June 13, 2017. Google admits that what appears to be a copy
16 of the '193 patent is attached to the Complaint as Exhibit G. Google denies that the '193 patent
17 was duly and legally issued. Google denies any remaining allegations of this paragraph.

18 383. Google is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations of this paragraph, and therefore denies them.

20 384. Google denies the allegations of this paragraph, and specifically denies that
21 Google has infringed, directly or indirectly, or is liable for infringement of any valid and
22 enforceable claim of the '193 patent.

23 385. Google admits that the cited website included the images reproduced in this
24 paragraph. Google denies that the original image included the red boxes appearing in the images
25 in this paragraph. Google denies that Space Data is using the images or their contents in context
26 or that the implication is the one that Space Data intends to draw from it. Google denies any
27 other factual allegations of this paragraph. The remaining allegations of this paragraph set forth
28

1 argument and legal conclusions to which no response is required. To the extent this paragraph
2 includes any additional allegations to which a response is required, Google denies them.

3 386. Google admits that Dan Piponi made the statement quoted in this paragraph in the
4 video cited in this paragraph and that the video cited in this paragraph includes the image
5 reproduced in this paragraph. Google denies that Mr. Piponi's quoted statement is complete or
6 unaltered by Space Data. Google denies that Space Data is using the image or its contents or the
7 quoted language in context or that the implication is the one that Space Data intends to draw from
8 it. Google denies any other factual allegations of this paragraph. The remaining allegations of
9 this paragraph set forth argument and legal conclusions to which no response is required. To the
10 extent this paragraph includes any additional allegations to which a response is required, Google
11 denies them.

12 387. Google admits that the cited website included the image reproduced in this
13 paragraph. Google denies that Space Data is using the image or its contents in context or that the
14 implication is the one that Space Data intends to draw from it. Google denies any other factual
15 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
16 legal conclusions to which no response is required. To the extent this paragraph includes any
17 additional allegations to which a response is required, Google denies them.

18 388. Google admits that the plus.google.com post cited in this paragraph includes the
19 first image reproduced in this paragraph, that Dan Piponi made the first statement quoted in this
20 paragraph in the plus.google.com post cited in this paragraph, that the video cited in this
21 paragraph includes the second image reproduced in this paragraph, and that Mr. Piponi made the
22 second statement quoted in this paragraph in the video cited in this paragraph. Google denies that
23 Mr. Piponi's second quoted statement is complete or unaltered by Space Data. Google denies that
24 Space Data is using the images or their contents or the quoted language in context or that the
25 implication is the one that Space Data intends to draw from it. Google denies any other factual
26 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
27 legal conclusions to which no response is required. To the extent this paragraph includes any
28 additional allegations to which a response is required, Google denies them.

1 389. Google admits that the plus.google.com post cited in this paragraph includes the
2 language quoted in this paragraph and that the video cited in this paragraph includes the image
3 reproduced in this paragraph. Google denies that Space Data is using the image or its contents or
4 the quoted language in context or that the implication is the one that Space Data intends to draw
5 from it. Google denies any other factual allegations of this paragraph. The remaining allegations
6 of this paragraph set forth argument and legal conclusions to which no response is required. To
7 the extent this paragraph includes any additional allegations to which a response is required,
8 Google denies them.

9 390. Google admits that the plus.google.com post cited in this paragraph includes the
10 image reproduced in this paragraph and the language quoted in this paragraph. Google denies
11 that Space Data is using the image or its contents or the quoted language in context or that the
12 implication is the one that Space Data intends to draw from it. Google denies any other factual
13 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
14 legal conclusions to which no response is required. To the extent this paragraph includes any
15 additional allegations to which a response is required, Google denies them.

16 391. Google admits that the plus.google.com post cited in this paragraph includes the
17 first image reproduced in this paragraph and the language quoted in this paragraph and that the
18 video cited in this paragraph includes the second image reproduced in this paragraph. Google
19 denies that Space Data is using the images or their contents or the quoted language in context or
20 that the implication is the one that Space Data intends to draw from it. Google denies any other
21 factual allegations of this paragraph. The remaining allegations of this paragraph set forth
22 argument and legal conclusions to which no response is required. To the extent this paragraph
23 includes any additional allegations to which a response is required, Google denies them.

24 392. Google admits that the .pdf cited in this paragraph includes the images reproduced
25 in this paragraph and the snippet of language quoted in this paragraph. Google denies that Space
26 Data is using the images or their contents or the quoted language in context or that the implication
27 is the one that Space Data intends to draw from it. Google denies any other factual allegations of
28 this paragraph. The remaining allegations of this paragraph set forth argument and legal

1 conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 393. Google admits that the website cited in this paragraph includes the images
4 reproduced in this paragraph and the snippet of language quoted in this paragraph. Google denies
5 that Space Data is using the images or their contents or the quoted language in context or that the
6 implication is the one that Space Data intends to draw from it. Google denies any other factual
7 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
8 legal conclusions to which no response is required. To the extent this paragraph includes any
9 additional allegations to which a response is required, Google denies them.

10 394. Google admits that the video cited in this paragraph includes the images
11 reproduced in this paragraph and the first statement quoted in this paragraph and that the .pdf
12 cited in this paragraph includes the second snippet quoted in this paragraph. Google denies that
13 the language quoted is complete and unaltered by Space Data. Google denies that Space Data is
14 using the images or their contents or the quoted language in context or that the implication is the
15 one that Space Data intends to draw from it. Google denies any other factual allegations of this
16 paragraph. The remaining allegations of this paragraph set forth argument and legal conclusions
17 to which no response is required. To the extent this paragraph includes any additional allegations
18 to which a response is required, Google denies them.

19 395. Google admits that the plus.google.com post cited in this paragraph includes the
20 first image reproduced in this paragraph, that Dan Piponi made the first statement quoted in this
21 paragraph in the plus.google.com post cited in this paragraph, that the video cited in this
22 paragraph includes the second image reproduced in this paragraph, and that Mr. Piponi made the
23 second statement quoted in this paragraph in the video cited in this paragraph. Google denies that
24 Mr. Piponi's second quoted statement is complete or unaltered by Space Data. Google denies that
25 Space Data is using the images or their contents or the quoted language in context or that the
26 implication is the one that Space Data intends to draw from it. Google denies any other factual
27 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
28

1 legal conclusions to which no response is required. To the extent this paragraph includes any
2 additional allegations to which a response is required, Google denies them.

3 396. Google admits that the plus.google.com post cited in this paragraph includes the
4 image reproduced in this paragraph and the language quoted in this paragraph. Google denies
5 that Space Data is using the image or its contents or the quoted language in context or that the
6 implication is the one that Space Data intends to draw from it. Google denies any other factual
7 allegations of this paragraph. The remaining allegations of this paragraph set forth argument and
8 legal conclusions to which no response is required. To the extent this paragraph includes any
9 additional allegations to which a response is required, Google denies them.

10 397. Google denies the allegations of this paragraph, and specifically denies that
11 Google has infringed, directly or indirectly, or is liable for infringement of any valid and
12 enforceable claim of the '193 patent.

13 398. Google admits that litigation counsel for the parties discussed the pending '193
14 patent application in an October 27, 2016 joint case management conference statement in this
15 action, and that Space Data's litigation counsel sent Google's litigation counsel a copy of the '193
16 patent on June 13, 2017. Google denies the remaining allegations of this paragraph.

17 399. Google denies the allegations of this paragraph.

18 400. Google admits that the language of Claim 1 of the '193 patent appeared by way of
19 an amendment to an existing claim of the application that issued as the '193 patent, and the
20 language of Claim 1 matches a claim in the Google application that issued as the '678 patent on
21 March 24, 2014, but Google denies that the implication is the one that Space Data intends to draw
22 from it. Google admits that Google elected not to contest priority between certain claims of the
23 '678 patent and the application that issued as the '193 patent. Google admits that Space Data's
24 litigation counsel in this action provided Google's litigation counsel in this action with a claim
25 chart for the '193 patent prior to the filing of Space Data's complaint that first asserted the '193
26 patent. Google admits that Space Data's litigation counsel in this action provided Google's
27 litigation counsel in this action with various updates concerning the status of the prosecution of
28 the '193 patent. Google denies the remaining allegations of this paragraph.

401. Google denies the allegations of this paragraph, and specifically denies that it has infringed, directly or indirectly, or is liable for infringement of any valid and enforceable claim of the '706 patent or that it has done so willfully or intentionally.

402. Google denies the allegations of this paragraph.

403. Google denies the allegations of this paragraph.

404. Google denies the allegations of this paragraph.

405. Google denies the allegations of this paragraph.

PRAYER FOR RELIEF

These paragraphs set forth the statement of relief requested by Space Data to which no response is required. Google denies any allegations contained in the Prayer for Relief to which a response is required.

Google denies each and every allegation of Space Data's complaint not specifically admitted or otherwise responded to above. Google specifically denies that it misappropriated or is liable for misappropriation of any trade secret belonging to Space Data, that it has breached or is liable for breach of contract, or that it has infringed or is liable for infringement of any valid and enforceable patent claims of Space Data. Google further specifically denies that Space Data is entitled to any relief whatsoever of any kind against Google as a result of any act of Google or any person or entity acting on behalf of Google.

AFFIRMATIVE DEFENSES

Google asserts the following affirmative defenses. To the extent any of the defenses, in whole or in part, relates to or negates an element of Space Data's claims, Google in no way seeks to relieve Space Data of its burden of proof or persuasion on that element. All defenses are pled in the alternative and do not constitute an admission of liability or that Space Data is entitled to any relief whatsoever. Google reserves any and all rights it has under the Federal Rules of Civil Procedure to assert additional defenses and/or counterclaims as additional facts are learned or present themselves during discovery or otherwise during the course of these proceedings.

**First Affirmative Defense – Independent Development
(Counts II – IV)**

Google independently developed Project Loon and its business model and technology. What is now Project Loon was conceived by Richard DeVaul in 2011 and was thereafter independently developed by Mr. DeVaul and many others through years of research, hard work, and trial and error, without the use or benefit of any of Space Data's alleged trade secrets or confidential information.

**Second Affirmative Defense – Generally Known
(Counts II – IV)**

Space Data's alleged trade secrets and confidential information constitute information that is generally known to the public or to other persons who can obtain economic value from its disclosure or use, including persons with special knowledge and skill in the ballooning and high-altitude communications platform fields. Space Data's alleged trade secrets and confidential information are common to numerous public and preexisting balloon and balloon-based communications systems. Space Data's alleged trade secrets and confidential information also consist of information that has been described, detailed, and pictured in publications and on publicly available Internet sites, including, for example, in Space Data's own patents and public presentations, and in public news stories about Space Data.

**Third Affirmative Defense – Readily Ascertainable
(Counts II – IV)**

Space Data's alleged trade secrets and confidential information are readily ascertainable by proper means from publicly available information about the stratosphere and stratospheric wind conditions, high-altitude ballooning, wireless communications systems, and other topics, including from Space Data's own publicly available patents and patent applications, press interviews and public presentations, as well as many other, third-party sources. Space Data's alleged trade secrets and confidential information consist of information that has been described, detailed, and pictured in publications and on publicly available Internet sites, including, for example, in Space Data's own patents and public presentations, and in public news stories about

1 Space Data.

2 **Fourth Affirmative Defense – No Reasonable Efforts to Maintain Secrecy**
3 **(Counts II – IV)**

4 Space Data has not taken reasonable efforts under the circumstances to maintain the
5 secrecy of its alleged trade secrets and confidential information. On information and belief,
6 Space Data has conveyed its alleged trade secrets and confidential information to various
7 individuals and entities, including potential business partners, customers, journalists, and Google
8 itself, without a non-disclosure or confidentiality agreement, or under a non-disclosure or
9 confidentiality agreement of limited scope and duration. Additionally, on information and belief,
10 Space Data has publicly disclosed some or all of its alleged trade secrets and confidential
11 information with each launch of its balloon platforms, as each of those balloon platforms
12 allegedly embodies some or all of Space Data's purported trade secrets and confidential
13 information, and the platform is freely available for inspection by any member of the public who
14 encounters it once it has landed. On information and belief, Space Data also has disclosed some
15 or all of its alleged trade secrets and confidential information in its own patents and patent
16 applications.

17 **Fifth Affirmative Defense – Lack of Independent Economic Value**
18 **(Counts II – III)**

19 Space Data's alleged trade secrets do not derive independent economic value, actual or
20 potential, from not being generally known to the public or to other persons who can obtain
21 economic value from their disclosure or use. Space Data's alleged trade secrets comprise
22 information that is already generally known to the public or to other persons who can obtain
23 economic value from its disclosure or use, including persons with special knowledge and skill in
24 the ballooning and high-altitude communications platform fields. Also, upon information and
25 belief, Space Data's attempts to monetize its alleged trade secrets have been generally
26 unsuccessful, and Space Data's business, despite having access to all of Space Data's alleged
27 trade secrets, has generally been unsuccessful.

**Sixth Affirmative Defense – Statute of Limitations
(Counts II – III)**

Space Data’s claims for misappropriation of trade secrets are barred, in whole or in part, by the applicable statute of limitations. Space Data was aware of Google’s plans and efforts to develop its own allegedly copy-cat balloon-based high-altitude communications system more than three years before Space Data filed its original complaint in this action. Specifically, Space Data was aware as a result of various news articles of Google’s research and development of a balloon-based communications system by May 2013, at the latest.

**Seventh Affirmative Defense – Invalidity
(Counts I & V-VII)**

The claims of the Patents-in-Suit are invalid and unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112, because the claims are directed to abstract ideas or other non-statutory subject matter; because the claims lack novelty, and are taught and suggested by the prior art; because the claims are obvious in view of the prior art; and because the claims suffer from a failure of written description, lack of enablement, and claim indefiniteness. Attached hereto as **Exhibit A** and **Exhibit B**, respectively, are Google’s Preliminary Invalidity Contentions Re: U.S. Patent No. 6,628,941 and Preliminary Invalidity Contentions Re: U.S. Patent Nos. 9,632,503, 9,653,706, and 9,678,193, which are incorporated herein by reference.

The Patents-in-Suit are invalid under U.S.C. §§ 102, 103 because the prior art anticipates and/or renders them obvious. Space Data did not invent the idea of free-floating stratospheric balloons for providing telecommunications links. To the contrary, numerous patents, patent applications, and other references, individually and/or in combination, disclose the asserted claims of the Patents-in-Suit. Specifically, the asserted claims of U.S. Patent No. 6,628,941 are anticipated and/or rendered obvious by: U.S. Patent No. 6,167,263 (Campbell), U.S. Patent No. 6,324,398 (Lanzerotti), U.S. Patent No. 5,949,766 (Ibanez-Meier), WO 95/04407 (Seligsohn I), WO 97/15992 (Tuval), WO 97/07609 (Gover), WO 97/33790 (Wong), U.S. Patent No. 6,018,659 (Ayyagari), U.S. Patent No. 3,424,405 (Struble); “An Investigation of the Applicability of High

Altitude, Lighter-Than-Air (LTA) Vehicles to the Tactical Communications Relay Problem” (Carten), “Raven Final Report - High Altitude Relay Platform System” (Raven Report), “A System Architecture for Long Duration Free Floating Flight for Military Applications” (Cirrus Report), and “Establishing Wireless Communications Services via High-Altitude Aeronautical Platforms: A Concept Whose Time Has Come?” (Djuknic), which disclose the use of networks of high-altitude platforms for communications. As detailed in Exhibit A, these prior art references anticipate and/or render obvious, alone or in combination with any one of the other prior art references, the asserted claims of the ’941 patent.

Similarly, U.S. Patent No. 9,678,193 is anticipated by WO 01/01710 (Knoblach), which discloses each and every element of the asserted claims. The asserted claims of the ’193 patent are also rendered obvious by, either alone or in combination with each other, Campbell, Seligsohn I, Struble, U.S. Patent No. 6,402,090 (’090 patent), Carten, POBAL-S Report (POBAL-S), “The Powered Balloon System” (LeClaire), GAINS Instrumentation, “Global Air-Ocean In-Situ System (GAINS)” (Girz), “Systems for Long Duration Flights” (Nishimura), “General Philosophy and Techniques of Balloon Control” (Gildenburg), “Balloon Trajectory Control” (Aaron), “Global Constellation of Stratospheric Scientific Platforms” (Global Aerospace Report), and the “AFCRL Report on Research” (AFCRL Report), which disclose balloon communications systems as well as horizontal positioning of balloons via altitude control and relative positioning of balloons within the communications system, as claimed by the ’193 patent. To the extent that Knoblach does not anticipate each claim of the ’193 patent, Knoblach, in combination with the above references, renders the claims obvious. As detailed in Exhibit B, these prior art references anticipate and/or render obvious, alone or in combination with the other prior art references, the asserted claims of the ’193 patent.

Likewise, the asserted claims of U.S. Patent Nos. 9,632,503 and 9,643,706 are anticipated and/or rendered obvious by Knoblach, Campbell, U.S. Patent No. 3,432,122 (Flickinger), U.S. Patent No. 5,645,248 (Campbell ’248), Seligsohn I, GAINS Instrumentation, Superpressure Stratospheric Vehicle (Chocol), ICAO Rules of the Air (ICAO), 14 C.F.R. § 101 (FAA 101), “Universal Terminate Package for NSBF Balloon Operations”, “Electrolytic Cell Timers for

1 Balloon-Borne Applications” (Anderson),” New Systems For Extending The Useful Float
2 Duration Of Standard Zero-Pressure Balloon Flights” (Holder), “Lightweight Payloads For
3 Superpressure Balloon Flights” (Jumper), and “The Ultralong Duration Balloon Project: A New
4 Capability” (Smith), which disclose balloon communications systems, as well as the balloon
5 components and flight-termination devices claimed by the ’503 and ’706 patents. As detailed in
6 Exhibit B, these prior art references anticipate and/or render obvious, alone or in combination
7 with the other prior art references, the asserted claims of the ’503 and ’706 patents.

8 Further, the ’941 patent is invalid under 35 U.S.C. § 101 to the extent that Space Data
9 takes the position, either expressly or inherently, that the Asserted Claims broadly cover the
10 abstract idea of using a network or constellation of free-floating stratospheric balloons to provide
11 line-of sight communications. To the extent that Space Data takes the position, either expressly
12 or inherently, that the asserted claims of the ’193 patent broadly cover relative positioning of
13 balloons using altitude adjustment, they are likewise invalid as a matter of law under 35 U.S.C.
14 § 101. Along similar lines, Space Data appears to interpret the ’503 and ’706 patents as
15 effectively covering any constellation of communications balloons that satisfies United States or
16 international regulations, such as ICAO Rules of the Air (“ICAO”) and 14 C.F.R. § 101 (“FAA
17 101”), which renders the asserted claims invalid as a matter of law under 35 U.S.C. § 101.

18 The Patents-In-Suit are also invalid under 35 U.S.C. § 112 because a person of ordinary
19 skill in the art would not have understood the alleged inventors to be in possession of the claimed
20 invention, would not have been able to make use of the alleged invention without undue
21 experimentation, and would not have understood what the claims meant. For instance, the ’941
22 patent contains a negative limitation—“free floating without any longitudinal and latitudinal
23 position control”—that is not adequately supported by the specification. Other claims of the ’941
24 patent fail for lack of written description and/or enablement because of the use of the phrase
25 “wherein said at least one of said communications devices is capable of handing off
26 communication with said first platform to said second platform as said first platform moves out of
27 a communication range of said at least one of said communications devices.” The specification
28 of the ’941 patent does not explain how such communications devices (*e.g.*, cellular phones)

1 would hand off communication from one balloon to another, nor does the specification describe
2 the criteria for determining when to perform hand off. Further, many of the asserted claims of the
3 '941 patent fail for impermissibly claiming both a system and the method for using that system.
4 For example, the '941 patent claims a system that includes a method step related to the manner of
5 launching the balloons so as to control relative spacing. Furthermore, the phrases "free floating
6 without any longitudinal and latitudinal position control" and "said plurality of lighter-than-air
7 platforms are launched in a manner such that when in an operating range of 60,000 to 140,000
8 feet there is substantially a relative distance between said plurality of lighter-than-air platforms"
9 fail to inform those skilled in the art about the scope of the claimed invention with reasonable
10 certainty, and are therefore indefinite.

11 The '193 patent suffers from similar failings that render it invalid under 35 U.S.C. § 112.
12 Specifically, one of skill in the art would not have understood Space Data to be in possession of
13 an invention comprising numerous of the limitations of the asserted claims of the '193 patent, and
14 the specification does not enable a person of ordinary skill in the art to make and use such an
15 invention without undue experimentation. For instance, as also explained in Exhibit B, one of
16 skill in the art would not have understood Space Data's specification to enable relative balloon
17 positioning and control, mesh networking, or balloon-to-balloon communication.

18 The '503 and '706 patents are also invalid under 35 U.S.C. § 112. As an initial matter,
19 many of the claims of the '503 patent are invalid as indefinite because of a lack of antecedent
20 basis. For example, independent claims 1, 6, and 15 of the '503 patent each have an element
21 requiring "wherein at least one of the geographical coordinates tracking system comprises a
22 GPS." In addition to the lack of intelligible meaning of this element in light of the confusing
23 grammar, there is a more fundamental problem: the claims never introduce the term
24 "geographical coordinates tracking system." Similarly, claim 29 of the '706 patent is invalid for
25 lack of antecedent basis of the phrase "wherein at least one of the geographical coordinates
26 tracking system comprises a GPS." Accordingly, these independent claims are invalid as
27 indefinite because they do not introduce a "geographical coordinates tracking system." Various
28 other claims of the '503 and '706 patents are invalid for indefiniteness because they include

1 language that fails to inform those skilled in the art about the scope of the invention with
 2 reasonable certainty. For example, the claims containing the phrases “substantially drifts along
 3 with the wind currents” and “substantially drifts along with the wind currents taking into account
 4 the wind currents” are indefinite.

5 **Eighth Affirmative Defense – Acquiescence, Waiver, Ratification, or Consent**
 6 **(Counts II-IV)**

7 Space Data’s claims and the relief sought by Space Data are barred, in whole or in part, by
 8 the equitable doctrines of acquiescence, waiver, ratification, or consent. Space Data knew that
 9 pursuant to the terms of the parties’ Mutual Confidentiality and Nondisclosure Agreement
 10 (“NDA”), any obligation that Google had to protect any alleged confidential information
 11 disclosed by Space Data to Google expired three years after the date of the disclosure; that is by,
 12 February 2011 at the latest. Space Data also knew that it had the right under the NDA to request
 13 in writing prior to that expiration of the three-year protection period that Google return or destroy
 14 the alleged confidential information. Yet despite knowing that it needed to take affirmative steps
 15 prior to February 2011, at the latest, to protect its alleged confidential information beyond
 16 February 2011, Space Data never asked Google to return or destroy any Space Data confidential
 17 information. Instead, Space Data knowingly and voluntarily let the NDA’s three-year protection
 18 period pass without taking any action with respect to its alleged confidential information.

19 Additionally, Space Data unreasonably delayed in bringing this action after learning in
 20 2013 of Project Loon and its alleged use of Space Data’s purported trade secrets and confidential
 21 information, and its delay indicated to Google that Space Data acquiesced and consented to
 22 Project Loon, and Google has been prejudiced as a result of Space Data’s conduct. Google
 23 officially disclosed Project Loon in June 2013, and Space Data was aware of the project through
 24 press reports by May 2013, at the latest, yet Space Data did not take any action or raise any
 25 concerns about Project Loon until it filed this action in 2016. Instead, Space Data reached out to
 26 Google seeking to assist Google with Project Loon, without indicating any concerns regarding the
 27 source of the technology or other information used by Google in connection with the project.
 28 Google thus did not know that Space Data objected in any way to Project Loon for years, until

1 Space Data finally filed suit. Google has been prejudiced by Space Data's conduct, including
2 because it could have made different technical or business choices to address Space Data's claims
3 before investing millions of additional dollars in Project Loon.

4 **Ninth Affirmative Defense – Laches**
5 **(Counts II-IV)**

6 Space Data's claims and the relief sought by Space Data are barred, in whole or in part, by
7 the equitable doctrine of laches. Space Data unreasonably delayed in bringing this action after
8 learning in 2013 of Project Loon and its alleged use of Space Data's purported trade secrets and
9 confidential information, and Google has been prejudiced as a result. Google officially disclosed
10 Project Loon in June 2013, and Space Data was aware of the project through press reports by
11 May 2013, at the latest, yet Space Data did not take any action or raise any concerns about Project
12 Loon until it filed this action in 2016. Instead, Space Data reached out to Google seeking to assist
13 Google with Project Loon, without indicating any concerns regarding the source of the
14 technology or other information used by Google in connection with the project. Google thus did
15 not know that Space Data objected in any way to Project Loon for years, until Space Data finally
16 filed suit. Google has been prejudiced by Space Data's conduct, including because it could have
17 made different technical or business choices to address Space Data's claims before investing
18 millions of additional dollars in Project Loon.

19 **Tenth Affirmative Defense – Unfulfilled Conditions Precedent**
20 **(Count IV)**

21 Space Data's claim for breach of contract and the relief sought by Space Data for breach
22 of contract is barred, in whole or in part, because Space Data failed to fulfill conditions precedent
23 to the enforcement of the contract. On information and belief, this failure includes, but is not
24 limited to, Space Data's failure to designate its alleged confidential information as required by the
25 NDA.

26 **Eleventh Affirmative Defense – Failure to Mitigate**
27 **(All Counts)**

28 Space Data failed to take reasonable and appropriate steps to mitigate the damages it

1 claims to have incurred. First, Space Data failed to properly designate some or all of its alleged
2 confidential information and trade secrets as required by the NDA. Space Data also knew that
3 pursuant to the terms of the parties' NDA, any obligation that Google had to protect any alleged
4 confidential information disclosed by Space Data to Google expired three years after the date of
5 the disclosure; that is by, February 2011 at the latest. Space Data also knew that it had the right
6 under the NDA to request in writing prior to that expiration of the three-year protection period
7 that Google return or destroy the alleged confidential information. Yet despite knowing that it
8 needed to take affirmative steps prior to February 2011, at the latest, to protect its alleged
9 confidential information beyond February 2011, Space Data never asked Google to return or
10 destroy any Space Data confidential information. Instead, Space Data knowingly and voluntarily
11 let the NDA's three-year protection period pass without taking any action with respect to its
12 alleged confidential information.

13 Additionally, Space Data unreasonably delayed in bringing this action after learning in
14 2013 of Project Loon and its alleged use of Space Data's purported trade secrets and confidential
15 information or about any alleged infringement by Google of any Space Data Patent. Google
16 officially disclosed Project Loon in June 2013, and Space Data was aware of the project through
17 press reports by May 2013, at the latest, yet Space Data did not take any action or raise any
18 concerns about Project Loon until it filed this action in 2016. Instead, Space Data reached out to
19 Google seeking to assist Google with Project Loon, without indicating any concerns regarding the
20 source of the technology or other information used by Google in connection with the project.
21 Google thus did not know that Space Data objected in any way to Project Loon for years, until
22 Space Data finally filed suit.

23 **ALPHABET INC. GOOGLE LLC, AND LOON LLC'S COUNTERCLAIMS**

24 Counter-claimants ALPHABET INC., GOOGLE LLC, and LOON LLC (collectively
25 "Google") allege their Counterclaims against Counter-defendant SPACE DATA
26 CORPORATION ("Space Data") as follows:
27
28

1 1. Google sets forth by reference paragraphs 1 through 405 of its Amended Answer
2 to the Fourth Amended Complaint, as well as Google's Affirmative Defenses to the Fourth
3 Amended Complaint, in their entirety as if fully set forth herein.

4 **NATURE OF THE ACTION**

5 2. This action arises under the United States patent laws, 35 U.S.C. § 1, *et seq.*, and
6 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Google seeks an order declaring that
7 Google does not infringe any valid claim of the '941, '503, '706, or '193 patents.

8 **THE PARTIES**

9 3. Alphabet Inc. is a Delaware corporation, with its principal place of business at
10 1600 Amphitheatre Parkway, Mountain View, California 94043-1351.

11 4. Google LLC is a Delaware limited liability company, with its principal place of
12 business at 1600 Amphitheatre Parkway, Mountain View, California 94043-1351.

13 5. Loon LLC is a Delaware limited liability company, with its principal place of
14 business at 1600 Amphitheatre Parkway, Mountain View, California 94043-1351.

15 6. In its Complaint, Space Data alleges that it is an Arizona corporation with its
16 principal place of business at 2535 W. Fairview Street, Suite 101, Chandler, Arizona 85224-4707.

17 **JURISDICTION AND VENUE**

18 7. These are counterclaims for Declaratory Relief for which this Court has
19 jurisdiction under Title 35 of the United States Code, as well as under 28 U.S.C. §§ 1331, 1338,
20 2201, and 2202.

21 8. This Court has personal jurisdiction over Space Data by virtue of its prosecution of
22 its Complaint in this Court. This Court also has personal jurisdiction over Space Data because the
23 parties agreed to adjudicate any dispute arising out of the parties' December 1, 2007 Mutual
24 Confidentiality and Nondisclosure Agreement in the state or federal courts within Santa Clara
25 County, California.

26 9. Venue is proper in this district under 28 U.S.C. § 1391(b).

27 **FACTS COMMON TO ALL COUNTS**

28 10. Space Data filed the underlying action against Google alleging, *inter alia*, that it is

1 owner of the '941, '503, '706 and '193 patents (collectively, the "Patents-in-Suit") and that
2 Google has infringed and/or is currently infringing the Patents-in-Suit through Google's research
3 and development of its Project Loon stratospheric balloon-based communication system.

4 11. Google denies Space Data's claims of patent infringement and avers that the
5 Patents-in-Suit and each of their claims are, among other things, invalid.

6 12. There exists a substantial and actual controversy between Google and Space Data
7 of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding
8 the non-infringement by Google and the invalidity of the Patents-in-Suit.

9 **COUNTERCLAIM 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF**
10 **U.S. PATENT NO. 6,628,941**

11 13. Google incorporates by reference the preceding averments set forth in
12 Counterclaim paragraphs 1–12.

13 14. Google does not and has not infringed any claim of the '941 patent in any manner,
14 directly or indirectly.

15 15. Google cannot infringe an invalid patent and the '941 patent is invalid. *See infra*
16 Counterclaim 2. And even if valid, Google does not infringe any of the claims of the '941 patent
17 in any manner—neither directly nor indirectly and neither literally nor pursuant to the doctrine of
18 equivalents.

19 16. For instance, Project Loon's stratospheric balloon-based communication system
20 does not comprise a "constellation" of lighter-than-air platforms, as claimed by the '941 patent.
21 Additionally, the spacing of the balloons within Project Loon's balloon communication system is
22 not determined by or dependent upon the manner in which the balloons are launched as claimed
23 in the '941 patent. That is, Project Loon balloons are not "launched in a manner such that . . .
24 there is a substantially a relative distance between said plurality of lighter-than-air platforms"—
25 which every asserted claim of the '941 patent requires.

26 17. As a result of Space Data's actions and statements, including the filing of the
27 Complaint and its allegations that Google infringes one or more valid and enforceable claims of
28

1 the '941 patent, there exists an actual, continuing, justiciable case or controversy between Google
2 and Space Data as to whether the '941 patent is infringed by Google.

3 18. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
4 Google is entitled to a judgment finding that the '941 patent is not infringed by any of Google's
5 products or services.

6 **COUNTERCLAIM 2: DECLARATORY JUDGMENT OF**
7 **INVALIDITY OF U.S. PATENT NO. 6,628,941**

8 19. Google incorporates by reference the preceding averments set forth in
9 Counterclaim paragraphs 1–18.

10 20. The claims of the '941 patent are invalid or unenforceable for failure to satisfy one
11 or more of the requirements of Title 35 of the United States Code, including without limitation 35
12 U.S.C. §§ 101, 102, 103 and 112, including because the alleged invention thereof lacks utility;
13 attempts to claim patent ineligible subject matter; is taught by, suggested by, and/or obvious in
14 view of, the prior art; and/or is not adequately supported by the written description of the patented
15 invention.

16 21. Space Data did not invent the idea of free-floating stratospheric balloons for
17 providing telecommunications links. To the contrary, numerous patents, patent applications, and
18 other references, individually and/or in combination, disclose the asserted claims of the '941
19 patent. Specifically, the asserted claims of the '941 patent are anticipated and/or rendered
20 obvious by Campbell, Lanzerotti, Ibanez-Meier, Seligsohn I, Tuval, Gover, Wong, Ayyagari,
21 Struble, Carten, Raven Report, Cirrus Report, and Djuknic, which disclose high-altitude networks
22 of platforms used for communications. Exhibit A demonstrates that each of these prior art
23 references anticipates and/or renders obvious, alone or in combination with any one of the other
24 prior art references, the asserted claims of the '941 patent.

25 22. Further, the '941 patent is invalid under 35 U.S.C. § 101 to the extent that Space
26 Data takes the position, either expressly or inherently, that the Asserted Claims broadly cover the
27 abstract idea of using free-floating stratospheric balloons to provide line-of sight
28 communications.

1 23. The '941 patent is also invalid under 35 U.S.C. § 112 because a person of ordinary
2 skill in the art would not have understood Space Data to be in possession of the claimed
3 invention, would not have been able to make use of the alleged invention without undue
4 experimentation, and would not have understood what the claims meant. For instance, the '941
5 patent contains a negative limitation—"free floating without any longitudinal and latitudinal
6 position control"—that is not adequately supported by the specification.

7 24. Other claims of the '941 patent fail for lack of written description and/or
8 enablement because of the use of the phrase "wherein said at least one of said communications
9 devices is capable of handing off communication with said first platform to said second platform
10 as said first platform moves out of a communication range of said at least one of said
11 communications devices." The specification of the '941 patent does not explain how such
12 communications devices (*e.g.*, cellular phones) would hand off communication from one balloon
13 to another, nor does the specification describe the criteria for determining when to perform hand
14 off.

15 25. Further, many of the asserted claims of the '941 patent fail for impermissibly
16 claiming both a system and the method for using that system. For example, the '941 patent
17 claims a system that includes a method step related to the manner of launching the balloons so as
18 to control relative spacing.

19 26. Furthermore, the phrases "free floating without any longitudinal and latitudinal
20 position control" and "said plurality of lighter-than-air platforms are launched in a manner such
21 that when in an operating range of 60,000 to 140,000 feet there is substantially a relative distance
22 between said plurality of lighter-than-air platforms" fail to inform those skilled in the art about
23 the scope of the invention with reasonable certainty, and are therefore indefinite.

24 27. As a result of Space Data's actions and statements, including the filing of the
25 Complaint and its allegations that Google infringes one or more valid and enforceable claims of
26 the '941 patent, there exists an actual, continuing, justiciable case or controversy between Google
27 and Space Data as to the validity and enforceability of the '941 patent.

28. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Google is entitled to a judgment finding that every asserted claim of the '941 patent is invalid and unenforceable.

**COUNTERCLAIM 3: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF U.S. PATENT NO. 9,632,503**

29. Google incorporates by reference the preceding averments set forth in Counterclaim paragraphs 1–28.

30. Google does not and has not infringed any claim of the '503 patent in any manner, directly or indirectly.

31. Google cannot infringe an invalid patent and the '503 patent is invalid. *See infra* Counterclaim 4. And even if valid, Google does not infringe any of the claims of the '503 patent in any manner—neither directly nor indirectly and neither literally nor pursuant to the doctrine of equivalents.

32. For instance, Project Loon balloons do not have “at least two separate power sources for the first and second flight termination devices,” as claimed in the '503 patent. Project Loon balloons also do not have a “tether that when broken separates the unmanned balloon and the payload,” as required by all of the asserted claims of the '503 patent. Also, Project Loon’s communication system does not comprise a plurality of airborne platforms with payloads “configured to communicate with an additional airborne payload attached to a separate unmanned balloon[.]”

33. As a result of Space Data’s actions and statements, including the filing of the Complaint and its allegations that Google infringes one or more valid and enforceable claims of the '503 patent, there exists an actual, continuing, justiciable case or controversy between Google and Space Data as to whether the '503 patent is infringed by Google.

34. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Google is entitled to a judgment finding that the '503 patent is not infringed by any of Google’s products or services.

COUNTERCLAIM 4: DECLARATORY JUDGMENT OF

INVALIDITY OF U.S. PATENT NO. 9,632,503

35. Google incorporates by reference the preceding averments set forth in Counterclaim paragraphs 1–34.

36. The claims of the '503 patent are invalid or unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112, including because the alleged invention thereof lacks utility; attempts to claim patent ineligible subject matter; is taught by, suggested by, and/or obvious in view of, the prior art; and/or is not adequately supported by the written description of the patented invention.

37. Space Data did not invent the idea of free-floating stratospheric balloons for providing telecommunications links. To the contrary, numerous patents, patent applications, and other references, individually and/or in combination, disclose many, if not all, of the asserted claims of the '503 patent. Specifically, the asserted claims of the '503 patent are anticipated and/or rendered obvious by Knoblach, Campbell, Flickinger, Campbell '248, Seligsohn I, GAINS Instrumentation, Choccol, ICAO, FAA 101, Anderson, Holder, Jumper, and Smith, which disclose balloon communications system as well as the balloon components and flight-termination devices claimed by the '503 patent. Exhibit B demonstrates that these prior art references anticipate and/or render obvious, alone or in combination with the other prior art references, the asserted claims of the '503 patent.

38. Space Data also appears to interpret the '503 patent as effectively covering any constellation of communications balloons that satisfies U.S. or international regulations, such as ICAO and FAA 101, which renders the asserted claims invalid as a matter of law under 35 U.S.C. § 101.

39. The '503 patent is also invalid under 35 U.S.C. § 112. Many of the claims of the '503 patent are invalid as indefinite because of a lack of antecedent basis. For example, independent claims 1, 6, and 15 of the '503 patent each have an element requiring “wherein at least one of the geographical coordinates tracking system comprises a GPS.” In addition to the lack of intelligible meaning of this element in light of the confusing grammar, there is a more

1 fundamental problem: the claims do not introduce a “geographical coordinates tracking system.”

2 40. Various other claims of the ’503 patent are invalid for indefiniteness because they
3 include language that fails to inform those skilled in the art about the scope of the invention with
4 reasonable certainty. For example, the claims containing the phrases “substantially drifts along
5 with the wind currents” and “substantially drifts along with the wind currents taking into account
6 the wind currents” are indefinite.

7 41. As a result of Space Data’s actions and statements, including the filing of the
8 Complaint and its allegations that Google infringes one or more valid and enforceable claims of
9 the ’503 patent, there exists an actual, continuing, justiciable case or controversy between Google
10 and Space Data as to the validity and enforceability of the ’503 patent.

11 42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
12 Google is entitled to a judgment finding that every asserted claim of the ’503 patent is invalid and
13 unenforceable.

14 **COUNTERCLAIM 5: DECLARATORY JUDGMENT OF**
15 **NON-INFRINGEMENT OF U.S. PATENT NO. 9,643,706**

16 43. Google incorporates by reference the preceding averments set forth in
17 Counterclaim paragraphs 1–42.

18 44. Google does not and has not infringed any claim of the ’706 patent in any manner,
19 directly or indirectly.

20 45. Google cannot infringe an invalid patent and the ’706 patent is invalid. *See infra*
21 Counterclaim 6. And even if valid, Google does not infringe any of the claims of the ’706 patent
22 in any manner—neither directly nor indirectly and neither literally nor pursuant to the doctrine of
23 equivalents.

24 46. For instance, Project Loon balloons do not have “at least two separate power
25 sources for the first and second flight termination devices,” as claimed in the ’706 patent. Project
26 Loon balloons also do not have a “tether that when broken separates the gas enclosure and the
27 payload.” Additionally, Project Loon’s balloon payloads do not have a transceiver that “is
28 capable of communicating with communication devices that are separate from the unmanned

balloon and include...a payload of another operational unmanned balloon” or a payload that “is configured to configured to communicate with an additional airborne payload attached to a separate unmanned balloon[.]”

47. As a result of Space Data’s actions and statements, including the filing of the Complaint and its allegations that Google infringes one or more valid and enforceable claims of the ’706 patent, there exists an actual, continuing, justiciable case or controversy between Google and Space Data as to whether the ’706 patent is infringed by Google.

48. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Google is entitled to a judgment finding that the ’706 patent is not infringed by any of Google’s products or services.

**COUNTERCLAIM 6: DECLARATORY JUDGMENT OF
INVALIDITY OF U.S. PATENT NO. 9,643,706**

49. Google incorporates by reference the preceding averments set forth in Counterclaim paragraphs 1–48.

50. The claims of the ’706 patent are invalid or unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103 and 112, including because the alleged invention thereof lacks utility; attempts to claim patent ineligible subject matter; is taught by, suggested by, and/or obvious in view of, the prior art; and/or is not adequately supported by the written description of the patented invention.

51. Space Data did not invent the idea of free-floating stratospheric balloons for providing telecommunications links. To the contrary, numerous patents, patent applications, and other references, individually and/or in combination, disclose many, if not all, of the asserted claims of the ’706 patent. Specifically, the asserted claims of the ’706 patent are anticipated and/or rendered obvious by Knoblach, Campbell, Flickinger, Campbell ’248, Seligsohn I, GAINS Instrumentation, Choccol, ICAO, FAA 101, Anderson, Holder, Jumper, and Smith, which disclose balloon communications system, as well as the balloon components and flight-termination devices claimed by the ’706 patent. Exhibit B demonstrates that these prior art references

1 anticipate and/or render obvious, alone or in combination with the other prior art references, the
2 asserted claims of the '706 patent.

3 52. Space Data also appears to interpret the '706 patent as effectively covering any
4 constellation of communications balloons that satisfies U.S. or international regulations, such as
5 ICAO and FAA 101, which renders the asserted claims invalid as a matter of law under 35 U.S.C.
6 § 101.

7 53. The '706 patent is also invalid under 35 U.S.C. § 112. For example, claim 29 of
8 the '706 patent is invalid as indefinite because of the lack of antecedent basis of the phrase
9 "wherein at least one of the geographical coordinates tracking system comprises a GPS." That is,
10 the independent claim does not introduce a "geographical coordinates tracking system."

11 54. Various other claims of the '706 patent are invalid for indefiniteness because they
12 include language that fails to inform those skilled in the art about the scope of the invention with
13 reasonable certainty. For example, the claims containing the phrases "substantially drifts along
14 with the wind currents" and "substantially drifts along with the wind currents taking into account
15 the wind currents" are indefinite.

16 55. As a result of Space Data's actions and statements, including the filing of the
17 Complaint and its allegations that Google infringes one or more valid and enforceable claims of
18 the '706 patent, there exists an actual, continuing, justiciable case or controversy between Google
19 and Space Data as to the validity and enforceability of the '706 patent.

20 56. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
21 Google is entitled to a judgment finding that every asserted claim of the '706 patent is invalid and
22 unenforceable.

23 **COUNTERCLAIM 7: DECLARATORY JUDGMENT OF**
24 **NON-INFRINGEMENT OF U.S. PATENT NO. 9,678,193**

25 57. Google incorporates by reference the preceding averments set forth in
26 Counterclaim paragraphs 1–56.

27 58. Google does not and has not infringed any claim of the '193 patent in any manner,
28 directly or indirectly.

59. Google cannot infringe an invalid patent and the '193 patent is invalid. *See infra* Counterclaim 8. And even if valid, Google does not infringe any of the claims of the '706 patent in any manner—neither directly nor indirectly and neither literally nor pursuant to the doctrine of equivalents.

60. For instance, Google does not control the spacing of balloons based on the relative distance to neighbor balloons. Specifically, Google does not “determin[e] a desired movement of the target balloon based on the determined locations of the one or more neighbor balloons relative to the determined location of the target balloon,” as required by all of the asserted claims. Also, Project Loon balloons do not comprise “a communication system that is operable for data communication with at least one or more neighbor balloons[.]” Project Loon balloons also are not part of a “mesh network” of balloons.

61. As a result of Space Data’s actions and statements, including the filing of the Complaint and its allegations that Google infringes one or more valid and enforceable claims of the '193 patent, there exists an actual, continuing, justiciable case or controversy between Google and Space Data as to whether the '193 patent is infringed by Google.

62. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Google is entitled to a judgment finding that the '193 patent is not infringed by any of Google’s products or services.

**COUNTERCLAIM 8: DECLARATORY JUDGMENT OF
INVALIDITY OF U.S. PATENT NO. 9,678,193**

63. Google incorporates by reference the preceding averments set forth in Counterclaim paragraphs 1–62.

64. The claims of the '193 patent are invalid or unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112, including because the alleged invention thereof lacks utility; attempts to claim patent ineligible subject matter; is taught by, suggested by, and/or obvious in view of, the prior art; and/or is not adequately supported by the written description of the patented invention.

1 65. Space Data did not invent the idea of free-floating stratospheric balloons for
2 providing telecommunications links. To the contrary, numerous patents, patent applications, and
3 other references, individually and/or in combination, disclose many, if not all, of the asserted
4 claims of the '193 patent. The '193 patent is anticipated by Knoblach, which discloses each and
5 every element of the asserted claims. The asserted claims of the '193 patent are further rendered
6 obvious by, either alone or in combination with each other, Campbell, Seligsohn I,'090 patent,
7 Carten, POBAL-S, (LeClaire, GAINS Instrumentation, Girz, Gildenburg, Aaron, Global
8 Aerospace Report, and the AFCRL Report, which disclose balloon communications systems as
9 well as horizontal positioning of balloons via altitude control and relative positioning of balloons
10 within the communications system, as claimed by the '193 patent. To the extent that Knoblach
11 does not anticipate each claim of the '193 patent, Knoblach, in combination with the above
12 references, renders the claims obvious. Exhibit B demonstrates that these prior art references
13 anticipate and/or renders obvious, alone or in combination with the other prior art references, the
14 asserted claims of the '193 patent.

15 66. Further, the '193 patent is invalid under 35 U.S.C. § 101 to the extent that Space
16 Data takes the position, either expressly or inherently, that the asserted claims of the '193 patent
17 broadly cover relative positioning of balloons using altitude adjustment, they are likewise invalid
18 as a matter of law under 35 U.S.C. § 101.

19 67. The '193 patent is also invalid under 35 U.S.C. § 112. Specifically, one of skill in
20 the art would not have understood Space Data to be in possession of an invention comprising
21 numerous of the limitations of the asserted claims of the '193 patent, and the specification does
22 not enable a person of ordinary skill in the art to make and use such invention without undue
23 experimentation. For instance, one of skill in the art would not have understood Space Data's
24 specification to enable relative balloon positioning and control, mesh networking, or balloon-to-
25 balloon communication.

26 68. As a result of Space Data's actions and statements, including the filing of the
27 Complaint and its allegations that Google infringes one or more valid and enforceable claims of
28

1 the '193 patent, there exists an actual, continuing, justiciable case or controversy between Google
2 and Space Data as to the validity and enforceability of the '193 patent.

3 69. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*,
4 Google is entitled to a judgment finding that every asserted claim of the '193 patent is invalid and
5 unenforceable.

6 **EXCEPTIONAL CASE**

7 70. On information and belief, this is an exceptional case entitling Google to an award
8 of its attorneys' fees incurred in connection with defending this action pursuant to 35 U.S.C.
9 § 285, as a result of, *inter alia*, Plaintiff's assertion of the Patents-in-Suit against Google with the
10 knowledge that Google does not infringe any valid or enforceable claim of the Patents-in-Suit
11 and/or that the Patents-in-Suit are invalid and/or unenforceable.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Google requests entry of judgment in its favor and against Space Data as
14 follows:

- 15 a. For a judgment dismissing Space Data's Complaint against Google with prejudice;
16 b. For a judgment that the Patents-in-Suit, and each and every asserted claim thereof,
17 are not infringed, invalid, and unenforceable;
18 c. For an order that Google is the "prevailing party" with respect to Space Data's
19 patent claims and that this case is "exceptional" within the meaning of 35 U.S.C. § 285, and for
20 an award granting Google its reasonable attorney's fees and costs, as permitted by law or equity;
21 d. For an order that Google is the "prevailing party" with respect to Space Data's
22 misappropriation of trade secrets and breach of contract claims and that Space Data's
23 misappropriation claims were made in bad faith, and for an award granting Google its reasonable
24 attorney's fees and costs, including expert witness fees, pursuant to California Civil Code §
25 3426.4, 18 U.S.C. § 1836(b)(3)(D), and/or as otherwise permitted by law or equity; and
26 e. Any other and further relief that this Court may deem just and proper.
27
28

JURY DEMAND

Google hereby demands a jury trial for all issues so triable.

Respectfully submitted,

Dated: September 6, 2018

KEKER, VAN NEST & PETERS LLP

By: /s/ Matthew M. Werdegar

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